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100 THROUGH 105, COWETA COUNTY
GEORGIA RECORDS.

AFTER RECORDING RETURN:

WALDROP & TRITE, LLC
195 N. JEFF DAVIS DR.
FAYETTEVILLE, GA 30214

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,

RESTRICTIONS AND EASEMENTS

FOR

PERSIMMON CREEK ESTATES SOUTH SUBDIVISION

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP
HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT
TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNER'S ASSOCIATION
ACT, O.C.G.A. § 44-3-220 ET SEQ.

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DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS

FOR

PERSIMMON CREEK ESTATES SOUTH SUBDIVISION

THIS DECLARATION is made on the date hereinafter set forth by

D BRENT, LLC, a Georgia Limited Liability Company

(hereinafter sometimes called "Declarant");

WITNESSETH

WHEREAS, Declarant is the owner of the real property described in Exhibit "A" of this Declaration or, if not the owner, Declarant has the written consent of the owner to subject such property to the provisions of this Declaration; and

WHEREAS, Declarant desires to subject the real property described in Exhibit "A" hereof to the provisions of this Declaration to create a residential community of single-family housing and to provide for the subjecting of other real property to the provisions of this Declaration;

NOW, THEREFORE, Declarant hereby declares that the real property described in Exhibit "A" hereof is hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments and liens, hereinafter set forth, which are for protecting the value and desirability of and which shall run with the title to, the real property hereby and hereafter made subject hereto and shall be binding on all persons having any right, title or interest in all or any portion of the real property now and hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title and assigns and shall inure to the benefit of each owner of all or any portion thereof.

Article 1 - Definitions

The following words, when used in this Declaration or in any Supplementary Declaration, shall have the following meanings:

1.1 "Articles of Incorporation"

means the Articles of Incorporation of Persimmon Creek Estates South Subdivision that Declarant will file with the Georgia Secretary of State and incorporated herein by this reference as may be amended from time to time.

1.2 "Association"

means Homeowners Association, that Declarant will set up as a Georgia nonprofit corporation.

1.3 "Board of Directors" or "Board"

means the appointed or elected body of the Association, vested with the authority to manage the affairs of the Association under the Georgia Nonprofit Corporation Code, O.C.G.A. § 14-3-101 et seq.

1.4 "Bylaws"

means the Bylaws effecting Persimmon Creek Estates South Subdivision and its Homeowners Association, attached to this Declaration as Exhibit "B" and incorporated herein by this reference as may be amended from time to time.

1.5 "Common Property"

means any and all real and personal property, including, without limitation, easements and other interests therein, and the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners.

1.6 "Community"

refers to that certain real property described in Exhibit "A", attached hereto, and such additions thereto as may be made by Supplementary Declaration as provided herein.

1.7 "Community-Wide Standard"

means the standard of conduct, maintenance or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of

Directors of the Association. Such determination, however, must be consistent with the Community Wide Standard originally established by the Declarant.

1.8 "Declarant"

means D Brent, LLC a Georgia Limited Liability Company and its successors-in-title and assigns, provided in a recorded instrument, such successor-in-title or assignee is designated as the 'Declarant' hereunder by the prior "Declarant" hereunder-, provided, further, upon the effective date of the designation of a successor Declarant, all rights of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that there shall be only one "Declarant" hereunder at any one point in time.

1.9 "Lot"

means any plot of land within the Community, whether or not improvements are constructed thereon which constitutes or will constitute, after the construction of improvements, a single-family dwelling site as shown on a plat recorded in the land records of the county where the Community is located. The ownership of each Lot shall include, and there shall pass with the title to each Lot as an appurtenance thereto, whether or not separately described, all of the rights and interest of an Owner in the Common Property, as herein provided, together with membership in the Association.

1.10 "Mortgage"

means any and all instruments used for the purpose of encumbering real property in the Community as security for the payment or satisfaction of an obligation, including, without limitation, any mortgage, deed to secure debt or deed of trust.

1.11 "Mortgagor"

means the holder of a Mortgage.

1.12 "Occupant"

means any Person occupying all or any portion of a Lot or other property located within the Community for any period of time, regardless of whether such Person is a tenant of the Owner of such property.

1.13 "Owner"

means the record owner, whether one or more Persons, of the fee simple title to any Lot, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation.

1.14 "Person"

includes any individual, individual acting in a fiduciary capacity, corporation, limited partnership, limited liability company, general partnership, joint stock company, joint venture, association, company, trust or other organization, whether or not recognized as separate legal entity.

1.15 "Supplementary Declaration"

means an amendment or supplement to this Declaration which subjects additional property to this Declaration and/or imposes additional covenants, conditions, restrictions or easements on the land described therein.

1.16 "Total Association Vote"

means the votes attributable to the entire membership of the Association (including votes of Declarant) as of the record date for such action, whether or not such members are present or represented at the meeting, where such votes are to be cast.

Article 2 Property Subject To This Declaration**2.1 Property Hereby Subjected To This Declaration.**

The real property which is, by the recording of this Declaration, subject to the covenants, conditions, restrictions and easements hereafter set forth and which, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied and encumbered subject to this Declaration is the real property described in Exhibit "A" attached hereto and by this reference made a part hereof.

2.2 Other Property.

Only the real property described in Exhibit "A" is hereby made subject to this Declaration; provided, however, by one or more Supplementary Declarations, Declarant and the Association have the right, but not the obligation, to subject other real property to this Declaration, as hereinafter provided.

Article 3 Association Membership and Voting Rights**3.1 Membership.**

Every Person who is the record owner of a fee or undivided fee interest in any Lot that is subject to this Declaration shall have a membership in the Association. The foregoing is

not intended to include Persons who hold an interest merely as security for performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one membership per Lot. Membership shall be appurtenant to and may not be separated from ownership of a Lot. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a member or the member's spouse, but in no event shall more than one vote be cast nor office held (except for Declarant) for each Lot owned.

3.2 Voting.

Members shall be entitled to one vote for each Lot owned. When more than one Person holds an ownership interest in a Lot, the vote for such Lot shall be exercised as those Owners themselves determine and advise the Secretary prior to any meeting. In the absence of such advice, the vote attributable to such Lot shall be suspended in the event more than one Person seeks to exercise it.

Article 4 Assessments

4.1 Purpose of Assessments.

The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of Lots, including, without limitation, the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

4.2 Creation of the Lien and Personal Obligation for Assessments.

Each Owner of a Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) general assessments; (b) special assessments; and (c) specific assessments. All such assessments, together with late charges, interest (at a rate set by the Board of Directors from time to time, but not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum on the principal amount due) and costs of collection, including, without limitation, reasonable attorney's fees actually incurred, shall, from the time the sums become due and payable, be a charge on the land and shall be a continuing lien in favor of the Association on the Lot against which each assessment is made. The recording of this Declaration shall constitute record notice of the existence of the lien and no further recordation of any claim of lien shall be required. Each such assessment, together with such late charges, interest and costs, shall also be the personal obligation of the Person who was the Owner of the Lot at the time the assessment fell due. Each Owner shall be personally liable for the portion of each assessment coming due while the Owner

of a Lot, and each grantee of an Owner shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings or deed in lieu of foreclosure. No Owner may waive or otherwise exempt such Owner 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 any assessment shall be claimed or allowed by reason of any failure of the Association to take some action or perform some function required to be taken or performed by the Association, the obligation to pay assessments being a separate and independent covenant on the part of each Owner. All payments shall be applied first to costs, then to late charges, then to interest and then to delinquent assessments.

4.3 General Assessments.

It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year. The Board shall cause the budget and the assessments to be levied against each Lot for the following period to be delivered to each member at least thirty (30) days prior to the due date of any general assessment. The budget and the assessment shall become effective unless disapproved at a meeting by a majority of the Total Association Vote and the Declarant. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for any period, then and until such time as a budget shall have been determined, as provided herein, the budget in effect shall continue. General assessments shall be levied equally on all similarly situated Lots and shall be paid in such manner and on such dates as may be fixed by the Board of Directors, which may include, without limitation, acceleration, upon ten (10) days' written notice for delinquents. Unless otherwise provided by the Board, the assessment shall be paid in one annual installment. General assessments include any sums the Board determines necessary for the continued ownership, operation and maintenance of the Common Property, operating expenses of the Association, payment for any items of betterment and the establishment of reserve funds as the Board shall deem proper. General assessments may include, without limitation, sums for property taxes, insurance premiums, legal and accounting fees, management fees, charges for utilities, cleaning and janitor services, landscape maintenance, expenses and liabilities incurred as provided herein and in the Articles of Incorporation and Bylaws for indemnification of officers and directors and in connection with the enforcement of rights and duties of the Association against Owners and others.

4.4 Special Assessments.

The Association may levy a special assessment if approved by two-thirds (2/3) of the Total Association Vote and the Declarant. Special assessments shall be paid as determined by the Board. The Board may permit a special assessment to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

4.5 Specific Assessments.

The Board shall have the power to levy specific assessments 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 and shall not constitute a waiver of the Board's right 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. Fines levied pursuant to this Declaration and the costs of maintenance performed by the Association for which the Owner is responsible shall be specific assessments. The Board may also specifically assess Owners for the following Association expenses:

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

(b) Expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be assessed equitably among all Lots according to the benefit received.

4.6 Subordination of Liens to Mortgages.

The lien of all assessments authorized herein is hereby made subordinate to the lien of any first Mortgage placed on a Lot, but only if, all assessments and charges with respect to such Lot authorized herein having a due date on or prior to the date of the Mortgage as filed of record have been paid. The lien hereby subordinated is only such lien as relates to assessments and charges authorized hereunder having a due date subsequent to the date such Mortgage is filed of record and prior the satisfaction, cancellation or foreclosure of such Mortgage or the sale or transfer of the Lot pursuant to any proceeding in lieu of foreclosure or the sale or transfer of the Lot pursuant to a sale under power contained in such Mortgage. Such subordination is merely a subordination and shall not relieve the Owner of the Lot of his or her personal obligation to pay all assessments coming due at any time when he or she is the Owner of such Lot; shall not relieve such Lot from the lien provided for herein (except to the extent a subordinated lien is extinguished as a result of such subordination as against a Mortgagor or such Mortgagor's assignee or transferee by foreclosure or by sale under power); and no sale or transfer of such Lot to the Mortgagor or to any other Person pursuant to a decree of foreclosure, or pursuant to any other proceeding in lieu of foreclosure or pursuant to a sale under power, shall relieve any existing or previous Owner of such Lot of any personal obligation or relieve such Lot or the then Owner of such Lot from liability for any assessment authorized hereunder become due after such sale and transfer.

4.7 Remedies of the Association.

Any assessments or installments thereof which are not paid when due shall be delinquent. In addition to the lien rights, the personal obligation of the then Owner to pay such assessments shall remain such Owner's personal obligation and shall also pass to such Owner's successors-in-title. Such Owner shall nevertheless remain as fully obligated as before to pay to the Association any and all amounts which such Owner was obligated to pay immediately preceding the transfer; and such Owner and such successors-in-title shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such Owner and such successors-in-title creating any indemnification of the Owner or any relationship of principal and surety as between themselves. Any assessment or installment thereof delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may from time to time determine. The Association may cause a notice of delinquency to be given to any Owner who has not paid within ten (10) days following the due date. In the event that the assessment remains unpaid after sixty (60) days, the Association may institute suit to collect such amounts and/or to foreclose its lien. Each Owner, by acceptance of a deed vests in the Association the right and power to bring all actions against such Owner personally, for the collection of such charges as a debt or to foreclose the lien. The lien provided for in this Declaration shall be in favor of the Association and shall be for the benefit of all Owners. The Association shall have the power to bid on the Lot at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. The Association may also suspend the membership rights of the delinquent Owner, including the right to vote, the right of enjoyment in and to the Common Property and recreational facilities and the right to receive and enjoy such servicing and other benefits as may then be provided by the Association. Any such suspension shall not affect such members obligation to pay assessments, due during the period of such suspension and shall not effect the permanent lien on such Lot in favor of the Association.

4.8 Date of Commencement of Assessments.

Assessments shall commence when the Board of Directors first determines a budget and levies assessments. The assessments provided for herein shall commence as to a Lot on the first to occur of the date that: (a) the Lot is first occupied for residential purposes; or (b) is one year after s the Lot was conveyed by Declarant. A Lot shall be occupied for residential purposes when it has been improved with a dwelling and has been conveyed to an owner who intends to occupy the dwelling, or, if the dwelling is occupied as a residence before such conveyance, the date of first occupancy. Assessments shall not apply to property still owned by Declarant.

4.9 Budget Deficits During Declarant Control.

For so long as the Declarant has the authority to appoint the directors and officers of the Association, Declarant may: (a) advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for capital reserves), and the sum of the annual, special and

specific assessments collected by the Association in any fiscal year (such advances shall be evidenced by promissory notes from the Association in favor of the Declarant); or (b) cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for similar loans in the local area of the Community. No Mortgage secured by the Common Property or any of the improvements maintained by the Association shall be given in connection with such loan.

4.10 Estoppel Letter.

The Association shall, within five (5) days after receiving a written request therefor and for a reasonable charge, as established by the Board, certify to the amount of any unpaid assessments constituting a lien on a specified Lot. A certification letter signed by an officer of the Association or the Association's managing agent, if any, as to the amount of assessments due with respect to a Lot shall be binding upon the Association.

Article 5 Maintenance; Conveyance of Common Property to Association

5.1 Association's Responsibility.

The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair and replacement of all landscaping and improvements situated on the Common Property. The Association shall also maintain (whether or not constituting Common Property):

- (a) all Community entry features;
- (b) Community landscaping originally installed by the Declarant, whether or not such landscaping is on a Lot, privately owned property or public right-of-way;
- (c) all ponds, lakes, dams and appurtenant structures, storm water detention/retention ponds and storm water drainage facilities serving the Community; and
- (d) all Community recreational facilities. In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether within or without the Community and to enter into easements and covenant to share costs agreements regarding such property where the Board has determined that such action would benefit the Owners. In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, or the Occupants, family, guests, lessees or invitees of an Owner, then the Association may perform such maintenance, repair or replacement and all costs thereof not paid for by insurance, shall be assessed against the Owner as a specific assessment. All maintenance by the Association shall be performed consistent with the Community-Wide Standard.

5.2 Owner's Responsibility.

Except for maintenance performed on a Lot by the Association pursuant to Section 5.1, if any, all maintenance of the Lot and all structures, landscaping, and other improvements thereon shall be the sole responsibility of the Owner thereof; who shall maintain such Lot in a manner consistent with the CommunityWide Standard and this Declaration. In the event that the Board of Directors determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair or replacement of items for which such Owner is responsible hereunder, the Association shall, except in an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair or replacement deemed necessary. The Owner shall have ten days after receipt of such notice within which to complete such maintenance, repair or replacement, or, in the event that such maintenance, repair or replacement is not capable of completion within a ten-day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair or replacement and all costs thereof shall be assessed against the Owner and the Lot as a specific assessment.

5.3 Conveyance of Common Property by Declarant to Association:

No Implied Rights. The Declarant may transfer or convey to the Association at any time and from time to time any personal property and any interest in improved or unimproved real property. Such conveyance shall be deemed to be accepted by the Association upon delivery of any personal property or upon recordation of an instrument of conveyance of any interest in real property, and the property shall thereafter be Common Property to be used and maintained by the Association for the benefit of its members. The Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section and shall have no duty or obligation to convey any property or property rights to the Association regardless of whether or not any such property has been made available for the use of Owners. The Declarant may reserve, by lease, license, easement or otherwise such rights of use and enjoyment in and to all or any portion of the property so conveyed as Declarant may reasonably require so long as such reservation is not materially inconsistent with the overall scheme of development for the Community. Neither the recordation of any subdivision plat nor the use by the Owners or maintenance by the Association of any property shall create any fights, easements or licenses, in the Association or the Owners, express or implied, unless and until any such property rights, easements or licenses are conveyed by the Declarant or the owner of such property to the Association or the Owners, as the case may be, by instrument recorded in the real estate records of the County where the property is listed.

Article 6 Architectural Standards

6.1 General.

No exterior construction, alteration or addition of any improvements of any nature whatsoever (including, without limitation, staking, clearing, excavation, grading, filling, construction of impervious surface, building, fence, exterior alteration of existing improvements, or change in the exterior color of any existing improvement), shall be commenced or placed upon any part of the Community, unless installed by the Declarant, an affiliate of Declarant, or approved in accordance with this Article, or otherwise expressly permitted in this Declaration. Any Owner may remodel, paint or redecorate the interior of structures on the Lot without approval. However, modifications to the interior of porches, patios and similar portions of a structure visible from outside the Lot shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. This Article shall not apply to the activities of the Declarant, nor to improvements to the Common Property by or on behalf of the Association. This Article may not be amended without the Declarant's written consent until (a) the Declarant no longer has the right to unilaterally annex additional property to the Community; and (b) each Lot has been improved with a dwelling for which a certificate of occupancy has been issued.

6.2 Architectural Review Committee.

Except as provided in Section 6.1 above, no exterior construction, addition or alteration shall be made unless and until plans and specifications showing at least the nature, kind, shape, height, materials and location shall have been submitted in writing to and approved by an Architectural Review Committee. The Association may employ for the Architectural Review Committee architects, engineers, or other Persons as it deems necessary to enable the Architectural Review Committee to perform its review. Until (a) the Declarant no longer has the right to unilaterally annex additional property to the Community; and (b) each Lot has been improved with a dwelling for which a certificate of occupancy has been issued, the Declarant shall have the right to appoint all members of the Architectural Review Committee. There shall be no surrender of this right except in a written instrument in recordable form executed by Declarant and recorded in the land records of the Clerk of the Superior Court of the Coweta County where this Declaration is recorded. Upon expiration or earlier surrender in writing of such right, the Board of Directors shall appoint the members of the Architectural Review Committee.

6.3 Guidelines and Procedures.

The Architectural Review Committee may adopt written design and development guidelines and application and review procedures, which might provide for a review fee. The Architectural Review Committee shall have sole and final authority to prepare and to amend the architectural guidelines. The Architectural Review Committee shall make the architectural guidelines available to Owners and builders who seek to engage in construction upon all or any portion of the Community and such Owners and builders

shall conduct their operations strictly in accordance therewith. If the Architectural Review Committee fails to approve or to disapprove submitted plans and specifications within thirty (30) days after the plans and specifications have been submitted to it, such approval shall be deemed to have been given. As a condition of approval under this Article, each Owner, on behalf of such Owner and such Owner's successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance to and on any improvement, change, modification, addition or alteration. In the discretion of the Architectural Review Committee, an Owner may be required to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of such Owner and such Owner's successors-in-interest. The Architectural Review Committee shall be the sole arbiter of such plans and may withhold approval for any reason, including, without limitation, purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. Any member of the Architectural Review Committee or its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property in the Community to inspect for the purpose of ascertaining whether or not these restrictive covenants have been or are being complied with. Such Persons shall not be deemed guilty of trespass by reason of such entry. In addition to any other remedies available to the Association, in the event of noncompliance with this Section, the Association may record in the appropriate land records a notice of violation hereunder naming the violating Owner. If construction does not commence on a project for which plans have been approved within 12 months of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the plans to the Architectural Review Committee for reconsideration.

6.4 Limitation of Liability.

Plans and specifications are not approved for engineering or structural design or quality of materials or compliance with any applicable code, federal, state or local, and by approving such plans and specifications neither the Declarant, the Architectural Review Committee, 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 Architectural Review Committee, the Board of Directors, nor the officers, directors, its employees and or agents of any of them shall be liable in damages to anyone. Every Person who submits plans specifications and every Owner agrees that such Person or Owner will not bring any law suit against Declarant, the Association, the Architectural Review Committee, The Board of Directors or the officers, directors, members, employees and agents of any them to recover any damages and hereby releases, remises, quitclaims and covenants not to sue for all claims, demands and causes of action arising out of or in connection to any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given.

6.5 No Waiver.

The approval of the Architectural Review Committee of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring approval or consent of the Architectural Review Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications or drawings or matters whatever subsequently or additionally submitted for approval or consent.

6.6 Variances.

Notwithstanding anything to the contrary contained herein, the Architectural Review Committee shall be authorized to grant individual variances from any of the provisions of this Declaration and the architectural guidelines if it determines that waiver of application or enforcement of the provision in a particular case is dictated by unique circumstances, such as, but not limited to, topography, natural obstructions, hardship, aesthetic considerations or environmental considerations and would not be inconsistent with the overall scheme of development for the Community. No variance shall be effective unless (a) in writing, (b) that it is not inconsistent with the overall scheme of development for the Community, or (c) stop the Architectural Review Committee from denying a variance in other similar circumstances. For purposes of this provision, the inability to obtain approval of any governmental agency or the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

6.7 Enforcement.

Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Architectural Review Committee, Owners shall, at their own cost and expense, remove such structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Architectural Review Committee and its agents shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, including, without limitation, attorney's fees, may be assessed against the Lot as a specific assessment. Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the architectural guidelines may be excluded by the Architectural Review Committee from the Community, subject to any applicable notice, and hearing procedures contained in the Bylaws. In such event, neither the Architectural Review Committee, the Association, its officers, or directors shall be held liable to any person for exercising the rights granted by this paragraph. In addition to the foregoing, the Association shall have the authority and standing to pursue all other remedies available at law and equity to enforce the provisions of this Article.

Article 7 Use Restrictions and Rules

7.1 Rules and Regulations.

The Board of Directors may, from time to time, without a vote of the members, promulgate, modify or delete rules and regulations applicable to the Community. Such rules and regulations shall be distributed to all Owners prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled or modified by a majority of the Total Association Vote and the consent of Declarant.

7.2 Residential Use.

Each Lot shall be used for residential purposes exclusively. Leasing of a Lot for residential occupancy shall not be considered a business or business activity. No trade or business of any kind may be conducted in or from a Lot, except that the Owner or Occupant residing in the residence on a Lot may conduct business activities within the residence so long as the business activity:

- (a) does not otherwise violate the provisions of the Declaration or Bylaws;
- (b) is not apparent or detectable by sight, sound or smell from the exterior of the Lot;
- (c) does not unduly increase traffic flow or parking congestion;
- (d) conforms to all zoning requirements for the Community;
- (e) does not increase the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage;
- (f) is consistent with the residential character of the Community;
- (g) does not constitute a nuisance or a hazardous or offensive use; and
- (h) does not threaten the security or safety of other residents of the Community,

and all as may be determined in each case in the sole discretion of the Board of Directors. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) the activity is engaged in full or part-time; (ii) the activity is intended to or does generate a profit; or (iii) a license is required for the activity. The Board of Directors may issue rules regarding permitted business activities.

7.3 Signs.

No sign of any kind shall be erected by an Owner or Occupant within the Community without the prior written consent of the Declarant or the Architectural Review Committee. Notwithstanding the foregoing, the Board and the Declarant shall have the

right to erect reasonable and appropriate signs. "For Sale" and security signs consistent with the Community-Wide Standard and any signs required by legal proceedings may be erected upon any Lot. The provisions of this Section shall not apply to any Mortgagor in possession due to foreclosure of a first Mortgage or as guarantee to any deed in lieu of such foreclosure.

7.4 Vehicles - Parking.

Vehicles shall be parked only in appropriate parking spaces serving the Lot or other designated areas, if any. No on-street parking, other than connection with special events as approved by the Board of Directors, shall be permitted within the Community. All parking shall be subject to such rules and regulations as the Board may adopt. The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, mini-bikes, scooters, go-carts, golf carts, trucks, campers, buses, vans and automobiles. The term "parking areas" shall refer to the number of garage parking spaces and the spaces located in the driveway of each Lot. All homes shall contain a garage; carports shall not be permitted. Garage doors should be kept closed at all times, except during times of ingress and egress from the garage. No vehicle may be left upon any portion of the Community, except in a garage or other area on a Lot approved by the Architectural Review Committee, for a period longer than five days if it is unlicensed or if it is in a condition such that it is incapable of being operated on the public highways. After such five-day period, such vehicle shall be considered a nuisance and may be removed from the Community by the Association. Any towed vehicle, boat, recreational vehicle, motor home, trailer, motorcycle, mini-bike, scooter, go-cart, golf cart, commercial truck, camper, bus or mobile home regularly stored in the Community or temporarily kept in the Community, except if kept in a garage or other area on the Lot approved by the Architectural Review Committee, for periods longer than 24 hours each shall be considered a nuisance and may be removed from the Community by the Association. Trucks with mounted campers which are used as a primary means of transportation shall not be considered recreational vehicles, provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal.

7.5 Leasing.

Lots may be leased for residential purposes. All leases shall require, without limitation, that the Occupants acknowledge receipt of a copy of the Declaration, Bylaws, use restrictions and rules and regulations of the Association. The lease shall also obligate the Occupants to comply with the foregoing.

7.6 Animals and Pets.

No animals, livestock or poultry of any kind may be raised, bred, kept or permitted on any Lot, with the exception of dogs, cats or other usual and common household pets. No animals shall be kept, bred or maintained for any commercial purpose. No exterior pens shall be erected or maintained on any Lot without the prior written consent of the Architectural Review Committee. The Board of Directors shall have the right to approve

the type of pets and the reasonable number thereof which may be maintained on a Lot. The Board of Directors shall have the right at its sole and absolute discretion to issue rules and regulations applicable to the keeping of household pets within the Community.

7.7 Nuisance.

It shall be the responsibility of each Owner and Occupant to event the development of any unclean, unhealthy, unsightly or unkempt condition on it. No property within the Community shall be used, in whole or in part, for the forage of any property or thing that will cause such Lot to appear to be in an unclean or damaged condition or that will be obnoxious to the eye; nor shall any substance, or thing will be kept that will emit foul or obnoxious odors or that will cause any noise or condition that will or might disturb the peace, quiet, safety, comfort or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance or nuisance to any Person using any property within the Community. No plants, animals, device or thing of any sort shall be maintained in the Community whose activities or existence is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the Community by other Owners and Occupants. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Lot.

7.8 Unsightly or Unkempt Conditions.

The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkempt conditions, shall not be pursued or undertaken in any part of the Community.

7.9 Antennas.

No exterior antennas, receiving dishes or similar apparatus of any kind for receiving or transmitting of radio or television signals shall be placed, allowed or maintained upon any portion of the Community, including any Lot, without the prior written consent of the Architectural Review Committee; provided, however, the Architecture Review Committee shall approve one television satellite receiving dish not larger than 24 inches in diameter which is mounted to the main dwelling so as not to be visible from the street in front of the Lot.

7.10 Tree Removal.

No trees that are more than four inches in diameter at a point 12 inches above the ground shall be removed without the prior written consent of the Architectural Review

Committee. However, no ornamental or flowering trees, including, but not limited to, dogwood trees, cottonwood trees, cherry trees or apple trees, regardless of diameter, shall be removed without the prior written consent of the Architectural Review Committee. Owners shall also comply with any local ordinance applicable to tree removal. In the event of a conflict between the provisions of this Section and any local ordinance, the more restrictive provision shall govern. This provision shall not apply to the Declarant.

7.11 Drainage.

Catch basins, retention ponds, detention ponds and drainage easement areas are for the purpose of controlling the natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner may obstruct or alter the drainage flows after location and installation of catch basins, retention ponds, detention ponds, drainage swales, storm sewers or storm drains without the prior written consent of the Architectural Review Committee.

7.12 Sight Distance at Intersections.

All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, shrub or other planting or thing shall be placed or permitted to remain where, in the opinion of the Board, it would create an unsafe condition.

7.13 Garbage Cans, Woodpiles, Etc.

All garbage cans, woodpiles, swimming pool pumps, filters and related equipment, and other similar items shall be located or screened so as to be concealed from view from neighboring streets and property. All rubbish, trash and garbage shall be regularly removed and shall not be allowed to accumulate.

7.14 Subdivision of Lot.

No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Architectural Review Committee. Declarant, however, hereby expressly reserves the right to subdivide and/or revise and re-record the subdivision plat of any Lot(s) with the consent of the Owner of the effected Lot(s) and to approve the revision and re-recording of any plat of any Lot(s) owned by any builder or developer, including, but not limited to, changing any Lot to Common Property or creating a public or private street over any Lot or property that was formerly a Lot, without the consent of any Person, other than the Owner(s) of such Lot(s).

7.15. Fences.

No fence or fencing type barrier of any kind shall be placed, erected, allowed or maintained upon any Lot without the prior written consent of the Architectural Review Committee. No chain link fences of any kind shall be erected (other than a chain link fence erected by Declarant surrounding the detention areas or other areas designated by Declarant). All fencing shall be constructed of either wood, finished masonry, or vinyl. No fence may be erected on the front corners of the house. No fence may be higher than six feet. Placement of fences on corner lots will be determined by the Architectural Review Committee. The Declarant and the Association may erect any type of fence on the Common Property or elsewhere within the Community as may be deemed appropriate by the Board of Directors or as necessary to satisfy the requirements of any law, regulation or government entity or for health and safety of residents.

7.16 Utility Lines.

Except as may be permitted by the Declarant or the Architectural Review Committee, no overhead utility lines, including lines for cable television, shall be permitted within the Community.

7.17 Air-Conditioning Units.

No window air conditioning units may be installed.

7.18 Lighting.

Exterior lighting on any Lot visible from the street shall not be permitted, except for: (a) approved lighting as originally installed on a Lot; (b) one decorative post light; (c) street lights in conformity with an established street lighting program for the Community; (d) seasonal decorative lights; or (e) other lighting approved by the Architectural Review Committee.

7.19 Energy Conservation Equipment.

No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless as an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Architectural Review Committee.

7.20 Swimming Pools.

No swimming pool shall be constructed, erected or maintained upon any Lot without the prior written consent of the Architectural Review Committee and in no event shall any above-ground swimming pool be permitted.

7.21 Gardens Play Equipment and Pools.

No vegetable garden, hammock, statuary, play equipment (including, without limitation, basketball goals) or pool to be erected on any Lot may be located other than between the rear dwelling line and the rear lot line, without the prior written consent of the Architectural Review Committee.

7.22 Mailboxes.

All mailboxes serving Lots shall be approved by the Architectural Review Committee. Identical replacement mailboxes may be installed without further approval; but no modification to or change in mailboxes may be made without the approval in writing of the Architectural Review Committee.

7.23 Clotheslines.

No exterior clotheslines of any type shall be permitted upon any Lot.

7.24 Entry Features.

Owners shall not alter, remove or add improvements to any entry features constructed by the Declarant on any Lot, or any part of any easement area associated therewith without the prior written consent of the Architectural Review Committee.

7.25 Hazardous Materials.

No hazardous materials may be used, generated, stored, disposed of discharged or released on, above, or under the Community, except in compliance with all applicable laws, regulations, ordinances and permits. "Hazardous materials" means any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, petroleum, oil, or any petroleum by-product as defined as a hazardous substance under any applicable federal, state, or local laws, regulations or ordinances whether existing as of the date of this Declaration, previously enforced or subsequently enacted. Each Owner shall:

- (a) disclose to the Board or its designee all hazardous materials proposed to be stored, used or generated in the Community; and
- (b) permit inspection by the Board or its designee of those portions of a Lot where hazardous materials are stored, used or generated.

Article 8 Insurance and Casualty Losses

8.1 Insurance on Common Property.

The Association shall obtain insurance coverage, if and to the extent necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the U.S. Department of Veterans Affairs, and the U.S. Department of Housing and Urban Development, as applicable to the Community. Accordingly, the Board of Directors shall obtain casualty insurance for all insurable improvements, whether or not located on the Common Property, which the Association is obligated to maintain. This insurance shall provide, at a minimum, fire and extended coverage and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The Board of Directors shall obtain a public liability policy applicable to the Common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least One Million (\$1,000,000.00) Dollars. Policies may contain a reasonable deductible as determined by the Board of Directors. All such insurance coverage shall be written in the name of the Association and shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with a company authorized and licensed to do business in Georgia.

(b) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(c) In no event shall the insurance coverage obtained and maintained by the Association 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 of Directors shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on directors, officers, employees and other persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall be determined in the directors' best business judgment, and, if available, shall at least equal three (3) months' total assessments plus reserves on hand. Fidelity coverage shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled, not renewed or substantially modified without at least thirty (30) days' prior written notice to the Association.

10.2 Other Annexation.

Upon the written consent of: (a) the owners thereof; (b) the Declarant; and (c) the Owners of at least two-thirds of the Lots, the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the county in which the property to be annexed is located a Supplementary Declaration describing the property being annexed. Any such Supplementary Declaration shall be signed by the owner of the property being annexed and the President of the Association whose signature shall be attested by the Secretary of the Association and any such annexation shall be effective only upon the filing for record of such Supplementary Declaration, unless a later effective date is provided therein.

10.3 Withdrawal of Property.

The Declarant reserves the right to amend this Declaration unilaterally at any time without prior notice and without the consent of any Person, for the purpose of removing certain portions of the Community then owned by the Declarant or its affiliates or the Association from the provisions of this Declaration, to the extent originally included in error or as a result of any changes whatsoever in the plans for the Community desired to be effected by the Declarant, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Community.

Article 11 Mortgage Provisions**11.1 Notices of Action.**

An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number, therefore becoming an "eligible holder"), will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by the Owner of the encumbered Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days; and

(c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

11.2 No Priority.

No provision of this Declaration or the Bylaws gives any Owner or other party priority over any rights of a Mortgagor of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

11.3 Notice to Association.

Upon request, each Lot Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

Article 12 Easements

12.1 Easements for Use and Enjoyment.

(a) Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to each Lot, subject to the following provisions:

(i) the right of the Association to charge reasonable admission and other fees for the use of any portion of the Common Property, to limit the number of Persons who may use the Common Property, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by authorized users and their guests and invitees;

(ii) the right of the Association to suspend the voting rights of an Owner and the right of an Owner to use the Community recreational facilities, if any, for any period during which any past due assessment against any Lot of the Owner remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, Bylaws or rules and regulations;

(iii) the right of the Association to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon and, upon the affirmative vote of the Owners of at least two-thirds of the Lots and the consent of Declarant, to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property;

(iv) the right of the Association to dedicate or grant licenses, permits, easements or rights-of-way over, under and through the Common Property to government entities, any quasi-governmental agency or to any utility company or cable television company;

(v) the right of the Association to dedicate, sell or transfer all or any portion of the Common Property upon the approval of the Owners of at least two-thirds of the Lots and the Declarant;

(vi) all other rights of the Association, the Declarant, Owners and Occupants set forth in this Declaration or in any deed conveying Common Property to the Association; and

(vii) all encumbrances and other matters shown by the public records affecting the Common Property.

(b) Any Owner shall be deemed to have made a delegation of such Owner's right of use and enjoyment in and to the Common Property and facilities located thereon to the Occupants of such Owner's Lot and the Owner and Occupants may further delegate such rights to their guests.

12.2 Easements for Utilities.

There is hereby reserved to the Declarant and granted to the Association a blanket, nonexclusive, transferable, and perpetual easement upon, across, above and under all property within the Community for access, ingress, egress, installation, alteration, repairing, replacing, and maintaining all utilities serving the Community or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master antenna system, cable television system, or security system which the Declarant or the Association might decide to have installed to serve the Community, including, without limitation, such easements as may be shown on the recorded subdivision plats for the Community. Declarant or the Association may alter drainage and water flow, install, repair, replace and maintain or authorize the installation, repairing, replacing and maintaining of such wires, conduits, cables and other equipment related to the providing of any utility or service.

12.3 Easement for Emergency Entry.

The Association shall have the right, but not the obligation, to enter upon any Lot for emergency, security and safety reasons and to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, Bylaws, and rules, which right may be exercised by any member of the Board, the officers, agents, employees, and managers of the Association and all policemen, firemen, ambulance

personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Lot to cure any condition which may increase the possibility of a fire, slope erosion or other hazard in an emergency situation and in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Association, but shall not authorize entry into any single family detached dwelling without permission of the Owner.

12.4 Easement for Maintenance.

Declarant hereby grants to the Association a perpetual easement across the exterior portions of all Lots as may be reasonably necessary for the performance of the maintenance obligations of the Association required herein. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment of Lots, reasonable steps shall be taken to protect such property and damage shall be repaired by the Association or its contractors at their sole expense.

12.5 Easement for Entry Features and Streetscapes.

There is hereby reserved to the Declarant and granted to the Association an easement for ingress, egress, installation, construction landscaping and maintenance of entry features and similar streetscapes for the Community, over and upon any portion of a Lot containing such entry features or streetscapes as may be more fully described on the recorded subdivision plats for the community. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around entry features and streetscapes and the right to grade the land under and around the same.

12.6 Easement for Drainage.

There is hereby reserved to the Declarant and granted to the Association an easement for creating and maintaining satisfactory drainage across Lots in the Community, over and across an area five feet wide along each side Lot line and ten feet wide along each rear Lot line; provided however such easement area shall not include any portion of a Lot upon which the foundation of a dwelling is located.

12.7 Easement During Construction and Sale Period.

Notwithstanding any provisions now or hereafter contained in this Declaration, the Bylaws, Articles of Incorporation, use restrictions, rules and regulations, architectural guidelines, and amendments thereto, Declarant reserves an easement across the Community for Declarant and any builder approved by Declarant to maintain and carry on, upon such portion of the Community as

Declarant may reasonably deem necessary, such facilities and activities as in the sole opinion of Declarant may be required or convenient for Declarant's and such builder's development; construction and sales activities related to property hereby and hereafter subjected to this Declaration or nearby property being developed by Declarant or such builders, including, but not limited to: the right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in the Community, including, without limitation, any Lot; the right to tie into any portion of the Community with streets, driveways, paths, 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, cable television, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to grant easements over, under, in or on the Community, including without limitation the Lots, for the benefit of neighboring properties for the purpose of tying into and/or otherwise connecting and using sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to convert Lots (with the consent of the Owner thereof) to Common Property and/or streets; the right to construct recreational facilities, utilities and other improvements on Common Property; the right to carry on sales and promotional activities in the Community; and the right to construct and operate business offices, signs, construction trailers, model residences and sales offices. Declarant and any such builder may use residences, offices or other buildings owned or leased by Declarant or such builder as model residences and sales offices and may also use Community recreational facilities as a sales office without charge. This Section shall not be amended without the Declarant's written consent until the Declarant's rights hereunder have terminated as hereinabove provided.

Article 13 General Provisions

13.1 Enforcement.

Each Owner and Occupant shall comply strictly with the Bylaws, rules and regulations and use restrictions, as amended or modified from time to time, and with the covenants, conditions, easements and restrictions set forth in this Declaration, the recorded subdivision plats for the Community and in the deed to such Owner's Lot, if any. The Board of Directors may impose fines or other sanctions for violations of the foregoing, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the Bylaws or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Association, the Declarant or an aggrieved Owner. All costs and expenses,

including, without limitation, reasonable attorney's fees and court costs incurred by the Declarant or the Association in connection with the enforcement of a violation of the within and foregoing covenants, conditions, restrictions and easements shall be paid by the Owner found to be violating same other than Declarant and shall constitute a lien against the Lot of such violating Owner. Failure by the Declarant, the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Association shall have the right to record in the appropriate land records a notice of violation of the Declaration, Bylaws, rules and regulations, use restrictions or design guidelines and to assess the cost of recording and removing such notice against the Lot of the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing. The Declarant shall not be liable to any Person for any violations of the provisions of this Declaration, the Articles of Incorporation, Bylaws, rules and regulations and use restrictions and Declarant does not warrant to anyone that such provisions will be enforced as to any property to which this Declaration is applicable. The initiation of enforcement action from time to time by the Declarant will be for its sole benefit and Declarant specifically disavows any obligation, implied or otherwise, to maintain or enforce such provisions.

13.2 Occupants Bound.

All provisions of the Declaration, Bylaws, rules and regulations, use restrictions and design guidelines which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants and the guests and invitees of Owners and Occupants. The Owner shall be responsible for insuring that the Occupants, the guests, invitees and licensees of the Owner and Occupant strictly comply with all provisions of the Declaration, Bylaws, rules and regulations, use restrictions and design guidelines. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not timely paid, the fine may then be levied against the Owner.

13.3 Self-Help

In addition to any other remedies provided for herein, the Association, the Declarant, the Architectural Review Committee or their respective duly authorized agents shall have the power to enter upon any Lot or any other portion of the Community to abate or remove any structure, thing or condition which violates this Declaration, the Bylaws, the rules and regulations or the use restrictions. Unless an emergency situation exists, the violating Lot Owner shall be given ten days' written notice of the intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after giving any notice required by law. All costs of self-help, including, without limitation, reasonable attorney's fees actually incurred, shall be assessed against the violating Owner as a specific assessment.

13.4 Duration.

The covenants, conditions, restrictions and easements contained in this Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by the Association, the Declarant and any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent provided by law; provided, however, if and to the extent that, Georgia law limits the period during which covenants restricting land to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, after which time, any such provisions shall be (a) automatically extended (to the extent allowed by applicable law) for successive periods of twenty (20) years (or the maximum period allowed by applicable law, if less), unless a written instrument signed by the then Owners of at least two-thirds (2/3) of the Lots has been recorded within the year immediately preceding the beginning of a twenty (20) year renewal period agreeing to change such provisions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated to the extent specified therein; or (b) extended, renewed, modified or terminated as otherwise provided herein or by law.

13.5 Termination of Rights of Declarant.

The rights of Declarant to take, approve or consent to actions hereunder and under the Bylaws shall cease and be of no further force and effect upon the earlier of: (a) the date that the Declarant no longer owns any property in the Community for development and sale and no longer has the right to unilaterally annex additional property to the Community as provided herein and a certificate of occupancy has been issued for a dwelling on each Lot in the Community; or (b) the date of recording by Declarant in the real estate records of the county where the Community is located of a written instrument terminating all of Declarant's rights hereunder.

13.6 Amendment.

This Declaration may be amended unilaterally at any time and from time to time by Declarant

(a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith;

(b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration;

(c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, without limitation, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or

(d) if such amendment is necessary to enable any governmental agency or private insurance company, including, without limitation, the U.S. Department of Housing and

Urban Development and the U.S. Department of Veterans Affairs, to insure or guarantee Mortgage loans on the Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Lot unless the Owner of such Lot consents thereto in writing.

Further, Declarant may unilaterally amend this Declaration for any purpose he deem necessary and this right will stay in effect till Declarant no longer has any property rights or owns any property within the community. The notice of Declarant's amendments to this Declaration shall become effective upon recordation unless a later effective date is specified therein.

13.7 Partition.

The Common Property shall remain undivided and no Owner shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Community and without the written consent of all holders of all Mortgages encumbering any portion of the property, including, but not limited to, the Lots located within the Community. This provision does not apply to Declarant and he may divide any common property.

13.8 Gender and Grammar.

The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine or feminine pronoun shall include the neuter, masculine and feminine.

13.9 Severability.

Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any Person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application and, to this end, the provisions of this Declaration are declared to be severable.

13.10 Captions.

The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular Article or Section to which they refer.

13.11 Preparer.

This Declaration was prepared by Waldrop and Trite, LLC, 195 North Jeff Davis Drive, Fayetteville, Georgia 30214.

13.12 Notices.

Notices provided for in this Declaration or the Articles or Bylaws shall be in writing, and shall be addressed to any Owner at the address of the Lot and to the Declarant or the Association at the address of their respective registered agent in the State of Georgia. Any Owner may designate a different address for notices to such Owner by giving written notice to the Association. Notices addressed as above shall be deemed delivered three business days after mailing by United States Registered or Certified Mail, postpaid, or upon delivery when delivered in person, including delivery by Federal Express or other reputable courier service.

13.13 Perpetuities.

If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

13.14 Indemnification.

To the fullest extent allowed by the Georgia Nonprofit Corporation Code, and in accordance therewith, the Association shall indemnify every current and former officer, director and committee member against any and all expenses, including, but not limited to, attorney's fees, imposed upon or reasonably incurred by any officer, director or committee member in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which such officer, director or committee member may be a party by reason of being or having been an officer, director or committee member. The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association and the Association shall indemnify and forever hold each such officer, director and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director or committee member, or former officer, director or committee member, may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

13.15 Inspection of Books and Records.

This Declaration, the Bylaws, copies of rules and use restrictions, membership register, books of account and minutes of meetings of the members of the Board and of committees shall be made available for inspection and copying by any member of the Association or by the duly appointed representative of any member and by holders, insurers or guarantors of any first Mortgage at any reasonable time and for a purpose reasonably related to such Person's interest as a member or holder, insurer or guarantor of

a first Mortgage at the office of the Association or at such other reasonable place as the Board shall prescribe. The Board shall establish reasonable rules with respect to (i) notice to be given to the custodian of the records; (ii) hours and days of the week when such an inspection may be made; and (iii) payment of the costs of reproducing copies of documents. Every director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extra copies of documents at the reasonable expense of the Association.

13.16 Financial Statements.

Financial statements for the Association shall be prepared annually on such accounting basis as may be required by the Board of Directors; provided, however, after having received the financial statements, the Owners, by a majority of the Total Association Vote and the consent of Declarant, may require that the accounts of the Association be audited as a common expense by a certified public accountant. Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs, such holder shall be entitled to receive a copy of audited financial statements within 90 days of the date of the request.

13.17 Notice of Sale, Lease or Acquisition.

Prior to the sale or lease of a Lot, the Owner shall provide the Association with written notice of the name of the purchaser or lessee, as the case may be, and such other information as the Board may reasonably require. Upon acquisition of a Lot each new Owner shall provide the Association with written notice of the name and mailing address of the Owner and such other information as the Board may reasonably require.

13.18 Variances.

Notwithstanding anything to the contrary contained herein, the Board of Directors shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws 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 is warranted and would not be inconsistent with the overall scheme of development for the Community.

13.19 Litigation.

No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least 75% of the Total Association Vote and or unless approved by the Declarant. This Section shall not apply to

- (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens),
- (b) the imposition and collection of assessments as provided herein,
- (c) actions brought by the Declarant
- (d) proceedings involving challenges to act under claims brought by the Association in proceedings instituted against it. This Section shall not be amended

unless such amendment is made unilaterally by the Declarant as provided herein or is approved by the percentage votes necessary to institute proceedings as provided above.

IN WITNESS WHEREOF, the Declarant herein hereby executes this instrument under seal, this 14th day of September, 2004.

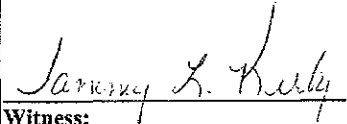
DECLARANT:

D BRENT, LLC



By: Donald Brent Scarbrough

TITLE: Member



Witness:

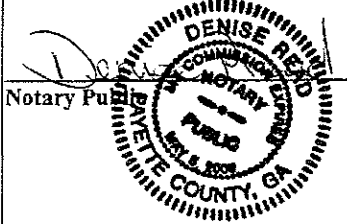


EXHIBIT A

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOTS 109, 110, 114 AND 115 OF THE 6TH DISTRICT, COWETA COUNTY, GEORGIA; BEING LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 94, 95, OPEN SPACE 3, AND AMENITY, OF PERSIMMON CREEK ESTATES SOUTH SUBDIVISION, PHASE I, AS PER PLAT RECORDED IN PLAT BOOK 81, PAGES 241, 242, 243, 244, 245, 246, AND 247, COWETA COUNTY, GEORGIA RECORDS. SAID PLAT BEING INCORPORATED HEREIN AND MADE A PART OF THIS DESCRIPTION BY REFERENCE.

**EXHIBIT "B" - BYLAWS FOR PERSIMMON CREEK
ESTATES SOUTH SUBDIVISION.**

Article 1 - Name, Membership, Applicability
and Definitions

1.1 Name. The name of the corporation shall be designated by the Declarant (hereinafter sometimes referred to as the "Association").

1.2 Membership. The Association shall have one class of membership, as is more fully set forth in that certain Declaration of Protective Covenants, Conditions, Restrictions and Easements for Persimmon Creek Estates South Subdivision (such Declaration, as amended, renewed, or extended from time to time, is hereinafter sometimes referred to as the "Declaration"), the terms of which pertaining to membership are specifically incorporated by reference herein.

1.3 Definitions. The words used in these Bylaws shall have the same meaning as set forth in the Declaration, unless the context shall prohibit.

Article 2 - Association: Meetings, Quorum,
Voting, Proxies

2.1 Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the members as may be designated by the Board of Directors, either in the Community or as convenient thereto as possible and practical.

2.2 Annual Meetings. There shall be an annual meeting of the members at such date, place and time as the Board of Directors shall determine to receive the reports of the outgoing Board of Directors, to install directors for the ensuing year and to transact such other business as may come before the meeting.

2.3 Special Meetings. The President or the Board of Directors may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association upon the delivery of a petition signed and dated by members entitled to cast at least 25% of the Total Association Vote and describing the purpose or purposes for which it is to be held. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose(s) thereof. No business shall be transacted at a special meeting, except those matters that are within the purpose or purposes described in the notice.

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2.4 Record Date. The Board of Directors shall fix in advance a record date for a determination of members entitled to notice of and to vote at any meeting of members or any adjournment thereof, or to make a determination of members for any other purpose, such date to be not more than seventy (70) days before the date on which the particular action requiring such determination of members is to be taken.

2.5 Notice of Meetings. It shall be the duty of the Secretary to mail or to cause to be delivered to the Lot of each member (as shown in the records of the Association as of the record date) a notice of each annual or special meeting of the Association stating the date, time and place where it is to be held and if and to the extent required by the Georgia Nonprofit Corporation Code (O.C.G.A. Section 14-3-101, et seq.) or other applicable law (the "Governing Law"), the purpose(s) thereof. If an Owner wishes notice to be given at an address other than the Lot, the Owner shall designate by notice in writing to the Secretary such other address. Notices shall be mailed or delivered not less than ten (10) days (or if notice is mailed by other than first class or registered mail, thirty (30) days) nor more than sixty (60) days before the meeting. If any meeting of the members is adjourned to a different date, time or place, notice need not be given of the new date, time or place, if the new date, time or place is announced at the meeting before adjournment. If, however, a new record date is or must be fixed under the Governing Law notice of the adjourned meeting shall be given to persons who are members of record as of the new record date.

2.6 Waiver of Notice. Waiver of notice of a meeting of the members shall be deemed the equivalent of proper notice. Any member may, in writing, signed by the member, waive notice of any meeting of the members, either before or after such meeting. Attendance at a meeting by a member, whether in person or by proxy, shall be deemed waiver by such member of lack of notice or defective notice, unless such member specifically objects to lack of proper notice at the time the meeting is called to order.

2.7 Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, a majority of the members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

2.8 Membership List. After the record date for any meeting is established by the Board of Directors, the Secretary shall prepare an alphabetical list of the names and addresses of all of the members who are entitled to notice of the meeting. Beginning at least two business days after notice is given of the meeting for which the list was prepared, the list of members shall be available for inspection by any member or a member's agent or attorney at the Association's principal office or at such other

reasonable place as may be specified in the notice. In addition, the list shall be available for inspection at the meeting or any adjournment thereof.

2.9 Voting. The voting rights of the members shall be as set forth in the Articles of Incorporation and the Declaration, and such voting rights are specifically incorporated herein.

2.10 Proxies. At all meetings of members, each member may vote in person or by proxy. All proxy appointment forms shall be in writing, dated, and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon: (a) receipt of notice by the Secretary of the death or judicially declared incompetence of a member; (b) receipt by the Secretary of written revocation signed by the member; (c) receipt by the Secretary of a subsequent appointment form signed by the member; (d) attendance by the member and voting in person at any meeting; or (e) the expiration of 11 months from the date of the proxy appointment form.

2.11 Quorum. The presence, in person or by proxy, of members entitled to cast at least 25% of the votes entitled to be cast at the meeting shall constitute a quorum at all meetings of the Association. The members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

2.12 Action Without A Formal Meeting. Any action required or permitted to be approved by the members may be approved without a meeting if one or more consents, in writing, setting forth the action so taken, shall be signed and dated by members (including the Declarant, if the consent of the Declarant is required) holding the voting power required to pass such action at a meeting held on the record date for such action. The record date for such action shall be the date that the first member signs a consent. Such action shall be approved when the Secretary receives a sufficient number of such consents dated within 70 days of the record date for such action. If less than unanimous consent is obtained, the approval shall be effective ten days after the Secretary gives written notice of the approval to all members who did not sign a consent. Each signed consent shall be included in the minutes of meetings of members filed in the permanent records of the Association.

2.13 Action By Written Ballot. Any action that may be taken at any annual, regular or special meeting of members may be taken without a meeting if **approved by written ballot as provided herein**. The Association shall deliver a written ballot to each member entitled to vote on the matter. The written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. All solicitations for votes by written ballot shall indicate the number of responses needed to meet the quorum requirements; state the percentage of approvals necessary to approve each matter other than election of directors; and specify the time by which a

ballot must be received by the Association in order to be counted. A timely written ballot received by the Association may not be revoked. Approval by written ballot of an action shall only be valid when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting held to authorize such action and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. The results of each action by written ballot shall be certified by the Secretary and shall be included in the minutes of meetings of members filed in the permanent records of the Association. The ballot must be received by the Association in order to be counted. A timely written ballot received by the Association may not be revoked. Approval by written ballot of an action shall only be valid when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting held to authorize such action and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. The results of each action by written ballot shall be certified by the Secretary and shall be included in the minutes of meetings of members filed in the permanent records of the Association.

Article 3 Board of Directors: Number, Powers, Meetings

3.1 Governing Body; Composition. The affairs of the Association shall be governed by a Board of Directors. Directors shall be natural persons who are 18 years of age or older. Except as provided in Section 3.2, each director must reside in the Community and be a member or the spouse of a member; provided, however, no Person may serve on the Board at the same time with such Person's spouse or any co-Owner or Occupant of such Person's Lot.

3.2 Directors Appointed by Declarant. The Declarant shall have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association until such time as the first of the following events shall occur: (a) the expiration of ten (10) years after the date of the recording of the Declaration; (b) the date on which all of the Lots planned by Declarant to be a part of the Community shall have been improved with a dwelling and conveyed to an Owner for occupancy as a residence; or (c) the surrender by Declarant in writing of the authority to appoint and remove directors and officers of the Association. The directors appointed by the Declarant need not be Owners or residents in the Community. The Lots planned by Declarant for the Community shall initially be the number of Lots shown on the Declarant's land use plan for the development as it may be amended from time to time. Inclusion of property on the land use plan shall not obligate the Declarant to subject such property to the Declaration, nor shall exclusion of property from the initial land use plan bar Declarant from subjecting such property to the Declaration. The final total number of Lots planned for the Community shall be the actually number of Lots shown on the recorded subdivision plats) for the Community regardless of any different

number of Lots shown from time to time on the land use plan. The Declarant shall notify the Association when the final subdivision plat for the Community has been recorded.

3.3 Number of Directors. The Board shall initially consist of three members. This number may be expanded to five by the association after Declarant's rights to appoint and remove board members expires.

3.4 Nomination of Directors. Elected directors may be nominated from the floor, if a meeting is held for the election of directors and may also be nominated by a nominating committee, if established by the Board. All candidates shall have a reasonable opportunity to communicate their qualifications to the members and to solicit votes.

3.5 Election and Term of Office. After the Declarant's right to appoint directors and officers terminates, the Association shall call a special meeting (or take action under Section 2.11 or Section 2.12 in lieu of a meeting) and the members shall elect three directors. The members of the Board of Directors shall hold office for one year and shall continue in office until their respective successors shall have been elected and take office. At annual meetings of the membership thereafter (or pursuant to Section 2.11 or Section 2.12 in lieu of a meeting), directors shall be elected. The three candidates receiving the most votes shall be elected.

3.6 Removal of Directors. At any annual, regular or special meeting of the Association, any one or more of the members of the Board of Directors elected by the members may be removed, with or without cause, by a majority of the Total Association Vote and a successor may then and there be elected to fill the vacancy thus created. The notice of the meeting shall state that the purpose, or one of the purposes, of the meeting is removal of a director. A director whose removal by the members has been proposed shall be given an opportunity to be heard at the meeting. Additionally, any director who has three consecutive unexcused absences from Board meetings or who is delinquent in the payment of an assessment for more than 30 days may be removed by a majority vote of the remaining directors. Declarant may remove any director with or without cause, and does not need the approval of the association or other board members.

3.7 Vacancies. Vacancies in the Board of Directors caused by any reason, excluding the removal of a director by vote of the Association, shall be filled by a vote of the majority of the remaining directors. Each Person so selected shall serve the unexpired portion of the term.

3.8 Organization Meetings. The first meeting of a newly elected Board of Directors shall be held within ten days after the election at such time and place as the directors may conveniently assemble.

3.9 Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by the Board, provided that, after the right of Declarant to appoint the directors terminates, at least four such meetings shall be held during each fiscal year with at least one per quarter. Notice of the regular schedule shall constitute sufficient notice of such meetings.

3.10 Special Meetings. Special meetings of the Board of Directors shall be held when requested by the President, Vice President or by any two directors. The notice shall specify the date, time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by one of the following methods: (a) by personal delivery (including commercial delivery service) to such director's home or office; (b) written notice by first class mail, postage prepaid; or (c) by telephone communication (including facsimile), either directly to the director or to the director's home or office. All such notices shall be given or sent to the director's address or telephone number as shown on the records of the Association. Notices sent by first class mail shall be deposited with the U.S. Postal Service at least four days before the time set for the meeting. Notices given by personal delivery or telephone shall be given at least two days before the day set for the meeting.

3.11 Waiver of Notice. The business transacted at any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if (a) a quorum is present, and (b) either before or after the meeting, each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes which is included in the minutes or filed with the official records of the Association. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.12 Quorum of Board of Directors. At all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors.

3.13 Compensation. No director shall receive any compensation from the Association for acting as such.

3.14 Open Meetings. All meetings of the Board shall be open to all members, but members other than directors may not participate in any discussion or deliberation unless expressly so authorized by the Board.

3.15 Executive Session. The Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in

which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

3.16 Action Without A Formal Meeting. Any action required or permitted to be taken at a meeting of the directors may be taken without a meeting if one or more consents, in writing, setting forth the action so taken, shall be signed by a majority of the directors and delivered to the Association for inclusion in the minutes for filing in the corporate records.

3.17 Telephonic Participation. One or more directors may participate in and vote during any meeting of the Board by telephone conference call or any other (c) by telephone communication (including facsimile), either directly to the director or to the director's home or office. All such notices shall be given or sent to the director's address or telephone number as shown on the records of the Association. Notices sent by first class mail shall be deposited with the U.S. Postal Service at least four days before the time set for the meeting. Notices given by personal delivery or telephone shall be given at least two days before the day set for the meeting.

3.18 Powers. The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by law, the Declaration, Articles, or these Bylaws directed to be done and exercised by the members. In addition to the duties imposed by these Bylaws or by any resolution of the Association that may hereafter be adopted, the Board of Directors shall have the power to and be responsible for the following, in way of explanation, but not limitation:

- (a) preparation and adoption of an annual budget in which there shall be established the contribution of each member to the common expenses;
- (b) making assessments to defray the common expenses and establishing the means and methods of collecting such assessments;
- (c) providing for the operation, care, upkeep, and maintenance of all areas which are the maintenance responsibility of the Association;
- (d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;

(e) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association;

(f) making and amending rules and regulations;

(g) opening of bank accounts on behalf of the Association and designating the signatories required;

(h) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules and regulations adopted by it, and bringing any proceedings which may be instituted on behalf of or against the members concerning the Association;

(i) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

(j) keeping books with detailed accounts payable, receivables and expenditures of the Association and the actions thereof, and specifying the maintenance and repair expenses and any other expenses incurred; and

(k) authorization of contracts on behalf of the Association.

3.19 Management Agent. The Board of Directors may employ for the Association a professional management agent or agents at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. The Declarant or an affiliate of the Declarant may be employed as managing agent or manager. The term of any management agreement shall not exceed one year and shall be subject to termination by either party, without cause and without penalty, upon 90 days' written notice..

3.20 Borrowing. The Board of Directors shall have the power to borrow money without the approval of the members of the Association; provided, however, except as otherwise provided in the Declaration, the Board shall obtain membership approval in the same manner as for special assessments, in the event that the total amount of such borrowing exceeds or would exceed ten percent of the annual budget of the Association.

3.21 Fining or Suspension Procedure. The Board shall not impose a fine (a late charge shall not constitute a fine) or suspend a member's right to vote or to use any part of the Common Property unless and until the following procedure is followed:

(a) Notice. Written notice shall be delivered to the member by first-class or certified mail sent to the address of the member shown on the Association's records, specifying:

(i) the nature of the violation, the fine or suspension to be imposed and the date, not less than 15 days from the date of the notice, that the fine or suspension will take effect;

(ii) that the violator may, within ten days from the date of the notice, request a hearing regarding the fine or suspension imposed;

(iii) the name, address and telephone numbers of a person to contact to challenge the fine or suspension;

(iv) that any statements, evidence,, and witnesses may be produced by the violator at the hearing; and

(v) that all rights to have the fine or suspension reconsidered are waived if a hearing is not requested within ten days of the date of the notice.

(b) Hearing . If a hearing is requested, it shall be held before the Board in executive session, and the violator shall be given a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing. No fine or suspension shall be imposed prior to the date that is five days after the date of the hearing.

Article 4 - Officers

4.1 Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer. Any two or more offices may be held by the same Person, excepting the offices of President and Secretary. The President and Treasurer shall be elected from among the members of the Board of Directors.

4.2 Election, Term of Office, and Vacancies. Except during the period in which the Declarant has the right to appoint the officers of the Association under Section 3.2 of these Bylaws, the officers of the Association shall be appointed annually by the Board of Directors at the first meeting of the Board of Directors following the election of directors. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

4.3 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.

4.4 Salaries. The officers shall receive no compensation.

4.5 Removal. Except for officers appointed by the Declarant, any officer may be removed, with or without cause, by the Board of Directors.

4.6 President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the members and directors. The immediate supervision of the affairs of the Association shall be vested in the President. It shall be the President's duty to attend to the business of the Association and maintain strict supervision over all of its affairs and interests. The President shall keep the Board of Directors fully advised about the affairs and conditions of the Association, and shall manage and operate the business of the Association pursuant to and in accordance with such policies as may be prescribed from time to time by the Board of Directors.

4.7 Vice President. The Vice President(s), if any, shall act in the President's absence or disability and shall have all powers, duties, and responsibilities provided for the President when so acting, and shall perform such other duties as shall from time to time be imposed upon any Vice President by the Board or delegated to a Vice President by the President.

4.8 Secretary. The Secretary shall keep the minutes of all meetings of the members and of the Board of Directors; notify the members and directors of meetings as provided by these bylaws and Georgia law; have custody of the seal of the Association; affix such seal to any instrument requiring the same; attest the signature or certify the incumbency or signature of any officer of the Association; and perform such other duties as the President, or the Board of Directors may prescribe. The Secretary shall perform the duties of the Treasurer of the Association in the absence or disability of the Treasurer.

4.9 Treasurer. The Treasurer shall keep, or cause to be kept, the financial books and records of the Association, and shall faithfully account for the association's funds, financial assets, and other assets entrusted to the Treasurer's care and custody. The Treasurer shall make such reports as may be necessary to keep the President and the Board of Directors informed at all times as to the financial condition of the Association, and shall perform such other duties as the President, or the Board of Directors may prescribe. The Treasurer shall maintain the money and other assets of the Association in the name and to the credit of the Association in such depositories as may be designated by the Board of Directors. The Treasurer may provide for the investment of the money and other assets of the Association consistent with the needs of the Association to disburse such money and assets in the course of the Association's business. The Treasurer shall perform the duties of the Secretary of the Association in the absence or disability of the Secretary.

4.10 Resignation. Any officer may resign at any time by giving written notice to the Board of Directors. Such resignation shall take effect on the date of the

receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Article 5 - Committees

Advisory committees to perform such tasks and to serve for such periods as may be designated by the Board are hereby authorized. Each committee shall be composed and shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors. An advisory committee shall not be authorized to exercise any authority of the Board under the Articles of Incorporation, the Declaration, these Bylaws or the Georgia Nonprofit Corporation Code.

Article 6 - Miscellaneous

6.1 Fiscal Year. The fiscal year of the Association shall be the calendar year unless otherwise determined by resolution of the Board.

6.2 Parliamentary Rules. Roberts Rules of Order (current edition) shall govern the conduct of all Association proceedings, when not in conflict with Georgia law, the Articles of Incorporation, the Declaration or these Bylaws.

6.3 Conflicts. If there are conflicts or inconsistencies between the provisions of Georgia law, the Articles of Incorporation, the Declaration and these Bylaws, the provisions of Georgia law, the Declaration, the Articles of Incorporation and the Bylaws (in that order) shall prevail.

6.4 Amendment. These Bylaws may be amended by the Board of Directors with the consent of the Declarant if such amendment is necessary to: (a) bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) enable any title insurance company to issue title insurance coverage with respect to the Lots subject to the Declaration; (c) required to enable an institutional or governmental lender or purchaser of mortgage loans, including, without limitation, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make or purchase Mortgage loans on the Lots subject to the Declaration; or (d) enable any governmental agency or private insurance company to insure or guarantee Mortgage loans on the Lots subject to the Declaration. In addition, these Bylaws may be amended upon the affirmative vote of at least two-thirds (2/3) of the Total Association Vote and the consent of Declarant. Declarant may amend these Bylaws at anytime without the affirmative vote of two thirds of the total association, and this right will continue until Declarant has no ownership in the community, or relinquishes that right in writing.