

BOARD RESOLUTION FOR MONTAGUE PLACE HOMEOWNERS ASSOCIATION, INC.
ADOPTING REGULATIONS FOR ROOT INTRUSION & TREE REMOVAL

WHEREBY, Article IV, Section 1 (a) of the covenants, gives the Board the right to, *make and to enforce reasonable rules and regulations governing the use of the Community, including the Lots and the Common Property;*

WHEREBY, Article IX, Section 1 provides in part that, *the Board may, from time to time, without consent of the Owners, adopt, modify, or delete rules and regulations applicable to the Community;* and

WHEREBY, the Board has determined it is in the best interest of the Association to adopt Regulations regarding tree root intrusion originating from a Lot, which threatens Common Property or an Area of Common Responsibility.

WHEREFORE, after any required notice, the following Regulations are hereby adopted, and will become effective ten days after mailing copies to all the Owners.

Regulation RE: Tree Root Intrusion & Tree Removal.

When tree root intrusion originating from an Owner's Lot, threatens damage to any Common Property or Areas of Common Responsibility, then after ten (10) days written notice to the Owner, the Association may remove the tree that is the source of the roots, at the sole expense of the Association. If the Owner prevents the Association from removing the tree, the Owner will be required to remove the tree within thirty (30) days from the above written notice, to utilize a qualified, professional vendor, and the Owner will be solely responsible for all related expenses.

The foregoing was adopted by resolution of the Board of Directors for Montague Homeowners Association, Inc., on this 16 day of MARCH, 2023 as indicated by the signatures below.

Signature: _____

Collin Moore, Secretary
Print Name & Position

Signature: _____

ROBERT GIGANTI, PRESIDENT
Print Name & Position

Signature: _____

Holly Woodward, Treasurer
Print Name & Position

Signature: _____

GERAIS WATSON via pm Holly Woodward
Mauro Welter
Print Name & Position

Signature: _____

Ray Adams
Ray Adams
Print Name & Position ATLARGE

BOARD RESOLUTION FOR MONTAGUE PLACE HOMEOWNERS ASSOCIATION, INC.
ADOPTING REGULATIONS RE: RETAINING WALL MAINTENANCE RESPONSIBILITY

WHEREBY, a retaining wall extends across the rear property line of seven Lots on Montague Place Drive, identified as street numbers 2915, 2925, 2935, 2945, 2955, 2965 and 2975;

WHEREBY, Article XIII, Section 2 of the covenants reads as follows: Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall or fence shall be shared equally by the Owners who make use of the wall or fence.;

WHEREBY, the owners of the seven above-identified properties are currently, jointly responsible for any necessary maintenance, repair, or replacement of the retaining wall, based upon the following: (i) Owners are responsible for maintenance of the Lot, other than those items which are the responsibility of the Association; (ii) Pursuant to Article XII, Section 1, the Association is not responsible for maintenance of the retaining wall as Common Property or otherwise as an Area of Common Responsibility; (iii) Pursuant to the subdivision plat, *it is the responsibility of the property owner to maintain any detention facility constructed on their property*; (iv) The subdivision plat does not include an easement for the Association to maintain the retaining wall, nor is the retaining wall itself listed on the plat; (v) The retaining wall is an attached improvement to real property, which means it is jointly owned by the seven owners;

WHEREBY, the retaining wall has some benefit to the whole subdivision by regulating the runoff of water and soil that would otherwise add to the deposits into the community's detention pond, which is already maintained by the Association;

WHEREBY, Article XII, Section 1 (c) regarding Associations Responsibility, provides that, *the Association shall have the right, but not the obligation, to maintain other property not owned by the Association where the Board of Directors has determined that such maintenance would benefit all Owners*;

WHEREBY, it would be difficult for the seven joint owners to coordinate needed maintenance and related expenses; and

WHEREBY, the Board has determined that it is in the best interest of the Association to manage the maintenance, repair, or replacement of the retaining wall, and pay for a portion of the related expenses with Association funds.

WHEREFORE, the Board adopts the following regulations regarding the maintenance, repair, or replacement of the retaining wall.

Regulations Regarding Maintenance of Jointly Owned Retaining Wall


Pursuant to Article XII, Section 1(c) of the covenants, the Board shall take over management of the jointly owned retaining wall, and shall also be responsible for 25% of the overall expenses for any maintenance, repair or replacement. The seven owners identified above, shall be obligated to pay an equal, pro-rata share of the remaining 75% of the overall expenses. Each pro-rata amount shall also constitute a specific assessment on the Lot, pursuant to Article V, Section 8(b).

The Association shall choose and direct the vendor to be used for any required work. Article XV, Section 5 of the covenants grants the Association an easement for entry on to a Lot for needed maintenance. Prior to any significant repairs, the Association shall provide the joint owners of the retaining wall (and any other affected owners) with at least 10 days written notice, unless there exists an emergency situation.


The foregoing regulations were adopted by resolution of the Board of Directors on this 8 day of SEPTEMBER, 2022, as indicated by the signatures below, and will take effect upon mailing a copy to all the owners in the subdivision.

Signature: 


ROBERT GIGANTI PRESIDENT
Print Name & Position

Signature: 


Harold welts
Print Name & Position

Signature: 

Collin Moore, Secretary
Print Name & Position

Signature: 

Holly Woodward
Print Name & Position

Signature: 

Ray Adams
Print Name & Position

BOARD RESOLUTION ADOPTING FINE AMOUNTS FOR VIOLATION OF THE
GOVERNING DOCUMENTS FOR MONTAGUE PLACE HOMEOWNERS ASSOCIATION, INC.

WHEREBY, Article V, Section 2 of the covenants for Montague Place provides in part that the Association may impose reasonable fines, which shall be considered specific assessments;

WHEREBY, Article V, Section 1 of the Association's Bylaws regarding "Enforcement", provides in part that the Board shall have the authority to make reasonable regulations, and, *the Board shall have the power to impose reasonable monetary fines, which shall constitute a lien upon the Lot/Unit of the violator...for violation of any duty imposed under the Declaration, these Bylaws, or any Association rules;*

WHEREBY, the Board wishes to establish reasonable fine amounts based upon those typically imposed by associations in the Atlanta-metro area; and

WHEREBY, the Board has determined that it is in the best interest of the Association that Owners have advanced notice of said fine amounts.

WHEREFORE, the following fine amounts are hereby adopted by the Board, and are effective upon sending copies of this Resolution to all the Owners.

Fine Amounts for Violation of the Governing Documents

I. DAILY FINES FOR ONGOING VIOLATIONS

Daily Fine for Most Violations: \$25 and \$50 Daily Fine for Repeat Offenders

The fine amount for all types of violations under the Governing Documents (other than those listed below as specific per incident fines) will be \$25 per day, per violation, until such time as the violation is corrected.

II. FINES PER INCIDENT FOR SPECIFIC TYPES OF VIOLATIONS

The following violations will incur the listed fine amounts, per incident, instead of the daily fine:

1. *Parking Outside of Designated Area (garage or driveway)- \$75*
2. *Not Picking-Up After Pet, or Pet Off Leash- \$75*

III. FLAT FINES, IN ADDITION TO, ANY APPLICABLE DAILY FINES

Architectural Approval Violation: \$150

There shall be a set fine in the amount of \$150 for making a modification to a Lot (including the exterior of the dwelling) without first obtaining written pre-approval pursuant to the Covenants This set amount is in addition to any daily fines incurred because the unapproved modification is also otherwise in violation of the governing documents.

Violation of Leasing Procedures & Regulations: \$150

There shall be a set fine in the amount of \$150 for a violation of a required leasing procedure or leasing regulation (See Article X of covenants). This set amount is in addition to any daily fines incurred due to an ongoing, unapproved lease.

Unapproved Removal of Tree: \$150


There shall be a set fine in the amount of \$150 for each tree removed without written pre-approval, which has a diameter greater than 6 inches. This set amount is in addition to any daily fines incurred until such time as there has been a replanting as approved by the Association.

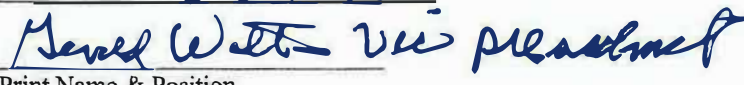
IV. REQUIRED PROCEDURE

The Association may only levy a fine after complying with the required notice procedures contained in Article V of the Bylaws, including disclosure of an owner's right to appeal.

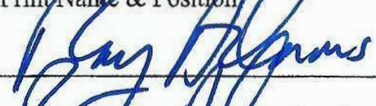
The foregoing Fine Amounts were adopted by resolution of the Board of Directors on this 8 day of SEPTEMBER, 2022, as indicated by the signatures below, and will take effect within 30 days from the date copies are provided to the owners.

Signature: 
Print Name & Position: ROBERT SIGANT PRESIDENT

Signature: 
Print Name & Position: Collin Moore, Secretary

Signature: GERALD WALTON

Print Name & Position: Gerald Walton Vice President

Signature: Holly Woodward
Holly Woodward
Print Name & Position: Holly Woodward

Signature: 
Ray Adams
Print Name & Position: Ray Adams

31971
00071 RECORDING RETURN TO:
F. DOLPH H. SCHNEIDER
MORRIS & SCHNEIDER, P.C.
2781 WINDY RIDGE PARKWAY
ATLANTA, GA. 30339
(770) 953-6106

8K31971PG0071

FILED AND RECORDED
CLERK SUPERIOR COURT
GWINNETT COUNTY, GA

FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR MONTAGUE PLACE SUBDIVISION

03 APR 15 PM 2:00

STATE OF GEORGIA
COUNTY OF GWINNETT

TOM LAWLER, CLERK

THIS AMENDMENT, made this 17th day of February, 2003, to amend the Declaration of Covenants, Conditions, Restrictions and Easements for Montague Place recorded in Deed Book 29080, Page 0004, Gwinnett County, Georgia, records:

WHEREAS, pursuant to the Declaration, Declarant desires to modify and amend the Declaration as specifically set forth below;

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00) and other good and valuable considerations, receipt and sufficiency of which are hereby acknowledged, Declarant hereby amends the Declaration and agrees as follows:

1. Under Article XII, Section 1 shall be amended as follows with the previous Article XII, Section 1 being deleted:

" Section 1. Associations Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility which shall be deemed to include only the following:

(a) maintenance, repair and replacement subject to any insurance then in effect, of the Common Property, including, but not limited to all Exclusive Common Property as defined herein. All Common Property landscaping and grassy area including the grassy area in a Lot, the water detention facility, the entry feature and the termite bond for the units.

(b) maintenance and repair of all roof surfaces above the wooden truss system including the plywood underdecking, felt and shingles.

(c) the Association shall have the right, but not the obligation, to maintain other property not owned by the Association where the Board of Directors has determined that such maintenance would benefit all Owners.

The foregoing maintenance shall be performed consistent with the Community-wide Standard.

The Association shall not be liable for injury or damage to person or property caused by the elements or by the Owner of any Lot, or any other person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Area of Common Responsibility or from any pipe, drain, conduit, appliance, or equipment which the Association is responsible to maintain hereunder. The Association shall not be liable to the Owner of any Lot or such Owner's Occupant, guest, or family for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Property. The Association shall not be liable to any Owner, or any Owner's Occupant, guest or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order of any municipal or other governmental authority.

The Association shall repair incidental damage to any Lot resulting from performance of work which is the responsibility of the Association. Repairs to

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improvements on a Lot shall be completed only to the extent of being "paint-ready". Such repair and subsequent cleaning shall be performed based on a reasonableness standard and at the sole discretion of the Board of Directors. In performing its responsibilities hereunder, the Association shall have the authority to delegate such Persons, firms or corporations of its choice, such duties as are approved by the Board of Directors.

In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association, is caused through the willful or negligent act of an Owner, his or her family, guests, lessees, or invitees, and is not completely covered or paid for by insurance, then the Association may perform the maintenance, repair or replacement at the expense of the Owner, and all costs shall be specifically assessed against the Owner and shall be added to and become a part of the assessment obligation of the Owner and shall become a lien against the Lot.

There is hereby reserved to the Association a blanket easement upon, across, over and under all property within the Community for access, ingress and egress as necessary to permit the Association to perform its maintenance responsibilities hereunder.

Any type of maintenance or repair not addressed above shall be considered the sole responsibility of the Owner including but not limited to all responsibilities enumerated in Article XII, Section 2.

All other terms and conditions of the Declaration shall remain the same.

IN WITNESS WHEREOF, the Declarant has caused this First Amendment to be duly executed and sealed this 17th day of February, 2003.

Signed, sealed and delivered in the presence of:

"DECLARANT"
OLD PEBBLETON CONSTRUCTION, INC.
By: *[Signature]*



Witness: *[Signature]*
Notary Public: *[Signature]*

ACKNOWLEDGEMENT AND CONSENT TO ABOVE

We, the undersigned current Homeowners do consent to the above amendment and will abide by the same.

Sworn to and Subscribed before me this 17th day of February, 2003

Witness: *[Signature]*

Notary Public: *[Signature]*

FOLUKE A. OLAYMIKA
OWNER OF LOT 19 (SEAL)

[Signature] (SEAL)
NENDY NOLF SEBAL
OWNER OF LOT 13

[Signature] (SEAL)
FRANCES E. CASEY

OWNER OF LOT 11
[Signature] (SEAL)
WU HSIN YI

OWNER OF LOT 26
[Signature] (SEAL)
KATY A. MORARU

OWNER OF LOT 14
[Signature] (SEAL)
IN SOL

31971
00073 RECORDING RETURN TO:
JOSEPH H. SCHNEIDER
MORRIS & SCHNEIDER, P.C.
2781 WINDY RIDGE PARKWAY
ATLANTA, GA. 30339
(770) 953-6106

8K31971PG0073

FILED AND RECORDED
CLERK SUPERIOR COURT
GWINNETT COUNTY, GA

03 APR 15 PM 2:00

TOM LAWLER, CLERK

FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR MONTAGUE PLACE SUBDIVISION

STATE OF GEORGIA
COUNTY OF GWINNETT

THIS AMENDMENT, made this 17th day of February, 2003, to amend the Declaration of Covenants, Conditions, Restrictions and Easements for Montague Place recorded in Deed Book 29080, Page 0004, Gwinnett County, Georgia, records:

WHEREAS, pursuant to the Declaration, Declarant desires to modify and amend the Declaration as specifically set forth below;

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00) and other good and valuable considerations, receipt and sufficiency of which are hereby acknowledged, Declarant hereby amends the Declaration and agrees as follows:

1. Under Article XII, Section 1 shall be amended as follows with the previous Article XII, Section 1 being deleted:

" Section 1. Associations Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility which shall be deemed to include only the following:

(a) maintenance, repair and replacement subject to any insurance then in effect, of the Common Property, including, but not limited to all Exclusive Common Property as defined herein. All Common Property landscaping and grassy area including the grassy area in a Lot, the water detention facility, the entry feature and the termite bond for the units.

(b) maintenance and repair of all roof surfaces above the wooden truss system including the plywood underdecking, felt and shingles.

(c) the Association shall have the right, but not the obligation, to maintain other property not owned by the Association where the Board of Directors has determined that such maintenance would benefit all Owners.

The foregoing maintenance shall be performed consistent with the Community-Wide Standard.

The Association shall not be liable for injury or damage to person or property caused by the elements or by the Owner of any Lot, or any other person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Area of Common Responsibility or from any pipe, drain, conduit, appliance, or equipment which the Association is responsible to maintain hereunder. The Association shall not be liable to the Owner of any Lot or such Owner's Occupant, guest, or family for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Property. The Association shall not be liable to any Owner, or any Owner's Occupant, guest or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order of any municipal or other governmental authority.

The Association shall repair incidental damage to any Lot resulting from performance of work which is the responsibility of the Association. Repairs to improvements on a Lot shall be completed only to the extent of being "paint-ready". Such repair and subsequent cleaning shall be performed based on a reasonableness standard and at the sole discretion of the Board of Directors. In performing its responsibilities hereunder, the Association shall have the authority to delegate such Persons, firms or corporations of its choice, such duties as are approved by the Board of Directors.

In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association, is caused through the willful or negligent act of an Owner, his or her family, guests, lessees, or invitees, and is not completely covered or paid for by insurance, then the Association may perform the maintenance, repair or replacement at the expense of the Owner, and all costs shall be specifically assessed against the Owner and shall be added to and become a part of the assessment obligation of the Owner and shall become a lien against the Lot.

There is hereby reserved to the Association a blanket easement upon, across, over and under all property within the Community for access, ingress and egress as necessary to permit the Association to perform its maintenance responsibilities hereunder.

Any type of maintenance or repair not addressed above shall be considered

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As of

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BK 29080PG0003

FILED & RECORDED
CLERK SUPERIOR COURT
GWINNETT COUNTY, GA.

02 OCT -7 PM 1:07

TOM LAWLER, CLERK

-----[SPACE ABOVE RESERVED FOR RECORDING DATA]-----

Return to: Weisman, Nowack, Curry & Wilco, P.C.
1349 West Peachtree Street, 15th Floor
Atlanta, Georgia 30309
Attention: Darryl R. Moss, Esq.

STATE OF GEORGIA
COUNTY OF GWINNETT

Reference: Deed Book 25051
Page 47

**AMENDED AND RESTATED DECLARATION OF COVENANTS,
RESTRICTIONS AND EASEMENTS
FOR MONTAGUE PLACE**

WHEREAS, St. Andrews Partners, LLC, a Georgia limited liability company, recorded a Declaration of Covenants, Restrictions and Easements for Montague Place, in Deed Book 25051, Page 47, et seq., Gwinnett County, Georgia Records (hereinafter referred to as the "Original Declaration"); and

WHEREAS, a plat entitled "Final Plat for Montague Place" dated October 2, 2001, was filed in Plat Book 91, Page 230, Gwinnett County, Georgia Records; and

WHEREAS, Declarant is the sole Owner of every Lot in the Community; and

WHEREAS, Article IX, Section 9.02 of the Original Declaration provides for unilateral amendment of the Original Declaration by the Declarant; and

WHEREAS, in accordance with Article VII, Section 7.9 of the Bylaws of Montague Place Homeowners Association, Inc. ("Original By-Laws"), the Original By-Laws may be amended by the Declarant; and

WHEREAS, Declarant and the Board of Directors have approved this amendment to the Original Declaration and the Original By-Laws at a meeting of the Association duly called for such purpose; and

NOW, THEREFORE, the Original By-Laws and the Original Declaration and all exhibits thereto are hereby stricken in their entirety and the following is simultaneously substituted therefore:

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9046-003

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**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS FOR MONTAGUE PLACE**

WEISSMAN, NOWACK, CURRY & WILCO, P.C.

**Attorneys
Two Midtown Plaza - 15th Floor
1349 West Peachtree Street
Atlanta, Georgia 30309
(404) 885-9215**

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DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS

FOR

MONTAGUE PLACE

THIS DECLARATION is made on the date set forth below by Old Peachtree Construction, Inc., a Georgia corporation ("Declarant");

WITNESSETH:

WHEREAS, Declarant is the owner of the real property described in Article II, Section 1 of this Declaration; and

WHEREAS, Declarant desires to subject the real property described in Article II, Section 1 to the provisions of this Declaration to create a residential community of attached townhomes and to provide for the subjecting of other real property to the provisions of this Declaration;

NOW, THEREFORE, Declarant declares that, subject to the provisions of Article XVII, Section 2 of this Declaration, the real property described in Article II, Section 1 of this Declaration, including the improvements constructed or to be constructed thereon, is 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, set forth in this Declaration, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property subject to this Declaration, and shall be binding on all persons having any right, title, or interest in all or any portion of the real property subject to this Declaration, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall be for the benefit of all owners of the property subject to this Declaration.

THIS DECLARATION DOES NOT AND IS NOT INTENDED TO CREATE A CONDOMINIUM REGIME SUBJECT TO THE GEORGIA CONDOMINIUM ACT, O.C.G.A. § 44-3-70, ET SEQ.

THIS DECLARATION DOES NOT AND IS NOT INTENDED TO SUBMIT THE PROPERTY TO THE TERMS OF THE GEORGIA PROPERTY OWNERS' ASSOCIATION ACT, O.C.G.A. § 44-3-220, ET SEQ.

ARTICLE I
Definitions

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

(1) "Additional Property" shall mean and refer to that certain real property and interests therein described in Exhibit "B" attached hereto.

(2) "Architectural Control Committee" or "ACC" shall mean the committee established to exercise the architectural review powers set forth in Article VIII hereof.

(3) "Area of Common Responsibility" shall mean the Common Property, together with those areas, if any, which by the terms of this Declaration or by agreement with any other Person become the Association's responsibility to maintain.

(4) "Articles" or "Articles of Incorporation" mean the Articles of Incorporation of Montague Place Homeowners Association, Inc., which have been filed with the Secretary of State of the State of Georgia.

(5) "Association" shall mean Montague Place Homeowners Association, Inc., its successors and assigns.

(6) "Board" or "Board of Directors" shall mean the appointed or elected body of the Association, as applicable, having its normal meaning under Georgia corporate law.

(7) "Bylaws" shall mean the Bylaws of Montague Place Homeowners Association, Inc., attached to this Declaration as Exhibit "C" and made a part of this Declaration.

(8) "Common Expenses" shall mean the expenses incurred or anticipated to be incurred by the Association for the general benefit of the Community, including, but not limited to, the costs of the common water and sewer bills and those expenses incurred for maintaining, repairing, replacing, and operating the Common Property and Area of Common Responsibility.

(9) "Common Property" shall mean any and all real and personal property and easements and other interests, together with the facilities and improvements located on the Community, now or in the future owned by the Association, including but not limited to, all landscape and grassy areas not included in a Lot, all roads, sidewalks and other concrete and paved areas not included in a Lot, the water detention facility, the mailbox building, the entry feature, the recreation area, gazebo, the trash compactor, and all personal property of the Association in any of these areas.

(10) "Community" shall mean and refer to that certain real property and interests therein described in Exhibit "A" attached hereto and incorporated herein by this reference, and such additions hereto as may be made by the Declarant or the Association by Supplementary Declaration of other real property.

(11) "Community Documents" shall mean this Declaration and all exhibits to this Declaration, including the Bylaws of the Association, and the Survey, all as may be supplemented or amended from time to time.

(12) "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing on the Community. Such standard may be more specifically determined by the Board and the ACC. This determination however, must be consistent with the Community-Wide Standard originally established by the Declarant.

(13) "Declarant" shall mean and refer to by Old Peachtree Construction, Inc., a Georgia corporation, and such of its successors-in-title who shall (i) acquire, from a predecessor "Declarant," for the purpose of development or sale, all or any portion of the real property described in Exhibits "A" and "B" hereto, and (ii) be designated as the "Declarant" in the deed of transfer by which such successors-in-title shall so acquire its interest in such real property, or by written assignment of Declarant rights in an instrument recorded in the Gwinnett County, Georgia records.

In all events there shall only be one (1) "Declarant" at any one time; in no event shall more than one (1) Person have the right to exercise the power and authority of the "Declarant" at any one time.

(14) "Effective Date" shall mean the date that this Declaration is recorded in the Gwinnett County, Georgia land records.

(15) "Exclusive Common Property" shall refer to that portion of the Common Property which is reserved for the exclusive use of the Owner or Occupant of one (1) or more, but less than all, Lots as more particularly set forth in this Declaration.

(16) "Lot" shall mean any plot of land on the Community, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single-family residence site as shown on the Survey. Each Lot consists of a Lot and all improvements thereon, including but not limited to, a residence, a front yard area, a backyard area, and a patio area.

(17) "Mortgage" shall mean any mortgage, deed to secure debt, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

(18) "Mortgagee" or "Mortgage Holder" shall mean the holder of a Mortgage.

(19) "Occupant" shall mean any Person occupying all or any portion of a Lot for more than thirty (30) days, either consecutive or nonconsecutive, in any calendar year, regardless of whether such Person is a tenant or the Owner of such property.

(20) "Owner" shall mean and refer to the record owner, whether one or more Persons, of the fee simple title to any Lot located on the Community, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation. The term "Owner" also shall include Declarant until Declarant's right to appoint and remove directors and officers expires as set forth in Article III, Section 2 of the Bylaws.

(21) "Person" shall mean any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, or other legal entity.

(22) "Supplementary Declaration" shall mean an amendment or supplement to this Declaration which subjects additional property to this Declaration or imposes additional restrictions and obligations on

the property, or both.

(23) "Survey" shall mean the plat or plats for Montague Place recorded in Plat Book 91, Page 230, Gwinnett County, Georgia records, and any amendments thereto. The Survey is incorporated herein by reference as fully as if the same were set forth in its entirety herein.

(24) "Total Association Vote" shall mean all of the votes attributable to members of the Association (including votes of Declarant), and the consent of Declarant so long as Declarant owns any property for development and/or sale in the Community.

ARTICLE II

Property Subject To This Declaration, Conveyance and Partition Of Common Property; Exclusive Common Area

Section 1. Property Hereby Subjected To This Declaration. The real property described in Exhibit "A" attached hereto and by this reference made a part hereof is, by the recording of this Declaration, subject to the covenants and restrictions hereafter set forth and, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to this Declaration.

Section 2. Other Property. Only the real property described in Section 1 of this Article II is made subject to this Declaration. However, by one (1) or more Supplementary Declarations, other real property may be subjected to this Declaration, as provided in Article XVII.

Section 3. Conveyance of Common Property by Declarant to Association. The Declarant may transfer or convey to the Association any personal property and any improved or unimproved real property, leasehold, easement, or other property interest which is or may be subjected to the terms of this Declaration. Such conveyance shall be accepted by the Association, and the property shall be Common Property to be maintained by the Association for the benefit of all or a part of its members. Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Article II, Section 3.

Section 4. Partition of Common Property. The Common Property shall remain undivided, and no Owner or any other Person, but excluding the Declarant, shall bring any action for partition or division of the whole or any part of the Common Property without the written consent of all Owners and all holders of all Mortgages encumbering any portion of the Community.

Section 5. Exclusive Common Property. Certain portions of the Common Property may be designated as Exclusive Common Property and reserved for the exclusive use of one (1) or more, but less than all, of the Lots.

(a) The Association's Board of Directors, without need for a membership vote, is hereby authorized to assign and to reassign Exclusive Common Property and Common Property parking spaces not previously assigned as Exclusive Common Property in accordance with this Section. Common Property parking spaces not previously assigned as an Exclusive Common Property may be so assigned and an Exclusive Common Property may be reassigned by the Board, without the need for a vote of the Association, upon written application to the Association by the Lot Owner or Owners for whose exclusive use such Common Property parking spaces is requested or whose use of the Exclusive Common Property previously assigned is directly affected. Upon such application, the Association shall prepare and execute

an amendment to the Declaration assigning the Common Property parking spaces as an Exclusive Common Property or reassigning the Exclusive Common Property, which amendment shall be executed by the Owner or Owners making such application. For so long as the Declarant owns a Lot primarily for the purpose of sale, an amendment to assign a Common Property, not previously assigned as a Exclusive Common Property shall be executed by the officers of the Association, if the request is made by the Declarant. The Board has the right to approve or disapprove any such request made by any Person other than the Declarant.

(b) For so long as Declarant owns any Lot primarily for the purpose of sale, Declarant shall have the right to sell to Lot Owners one (1) or more parking spaces to be assigned as Exclusive Common Property pursuant to subsections (a) and (b) above. The proceeds of the sale of parking spaces as Exclusive Common Property shall belong to the Declarant.

ARTICLE III Association Membership and Voting Rights

Section 1. Membership. Every Person who is the record owner of a fee interest in any Lot that is subject to this Declaration shall automatically be a member in the Association. Membership shall not include Persons who hold a security interest only 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 (1) membership per Lot. In the event of multiple Owners of a Lot, votes and rights of use and enjoyment shall be as provided in this Declaration and in the Bylaws. Membership shall go along with and may not be separated from ownership of any 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 (1) vote be cast nor one (1) office held for each Lot owned.

Section 2. Voting. Members shall be entitled to one (1) equal vote for each Lot owned. When more than one (1) Person holds an ownership interest in any Lot, the vote for such Lot shall be cast as those Owners decide and instruct the Secretary prior to any meeting. If the Secretary is not instructed, the Lot's vote shall be suspended in the event more than one (1) Owner of a Lot attempts to cast it.

ARTICLE IV Association Rights and Restrictions; Variances

Section 1. Association Rights and Restrictions. The Association, acting through its Board of Directors, shall have the right and authority, in addition to and not in limitation of all other rights it may have, to:

(a) make and to enforce reasonable rules and regulations governing the use of the Community, including the Lots and the Common Property;

(b) enforce use restrictions, other Declaration and Bylaws provisions, and rules and regulations by imposing reasonable monetary fines, exercising self-help powers, and suspending use and voting privileges and services paid for as a Common Expense, as provided herein. These powers, however, shall not limit any other legal means of enforcing the use restrictions or Association rules and regulations by either the Association or, in an appropriate case, by an aggrieved Owner;

(c) grant and accept permits, licenses, utility easements, and other easements, permits, or licenses necessary for the proper maintenance or operation of the Community under, through, or over the

Common Property, as may be reasonably necessary to or desirable for the ongoing development and operation of the Community;

(d) control, manage, operate and, in the Board's discretion, maintain, replace, alter or improve all portions of the Community for which the Association is assigned maintenance responsibility under this Declaration;

(e) to represent and act on behalf of the Association in the event of damage or destruction as a result of casualty loss, condemnation or eminent domain, in accordance with the provisions of this Declaration;

(f) represent the Owners in dealing with governmental entities on matters related to the Common Property;

(g) permanently or temporarily close any portion of the Common Property (excluding: (i) any portion of the Common Property the use of which is reasonably necessary for access to or from a Lot, or (ii) any portion of the Common Property over, on, upon or which the Declarant has an easement) with thirty (30) days prior notice to all Owners, except that, in emergency situations requiring a temporary closing, prior notice shall not be required so long as notice is given within three (3) days after the closing explaining the reason for the closing. Notwithstanding the above, the Owners may re-open the closed Common Property by a majority of the Total Association Vote, cast at a duly called special or annual meeting;

(h) enter into Lots for maintenance, emergency, security, or safety purposes, or otherwise to discharge its powers or responsibilities hereunder, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all police officers, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be only during reasonable hours and after reasonable notice to the Owner or Occupant of the Lot. For purposes of this Section, an emergency justifying immediate entry into a Lot shall include, but not be limited to the following situations: a water or other utility leak, fire, strong foul odor, obvious insect infestation or sounds indicating that a person or animal might be injured or sick and require immediate medical attention. No one exercising the rights granted in this subparagraph shall be liable for trespass, damages, or in any other manner by virtue of exercising such rights. The failure to exercise the rights herein or to exercise said rights in a timely manner shall not create liability to any of the above-referenced parties, it being agreed that no duty to enter a Lot shall exist; and

(i) acquire, lease, hold, and dispose of tangible and intangible personal property and real property.

Section 2. Variances. Notwithstanding anything to the contrary contained in this Declaration, the Board of Directors or its designee 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 would not be inconsistent with the overall scheme of development for the Community.

ARTICLE V
Assessments

Section 1. Purpose of Assessment. The assessments provided for herein shall be used for the general purposes of promoting the common benefit and enjoyment of the Owners and Occupants of Lots, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

Section 2. Creation of the Lien and Personal Obligation for Assessments. Each Owner of any 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) annual assessments or charges, (b) special assessments, such assessments to be established and collected as hereinafter provided, and (c) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this Declaration. All such assessments, together with late charges, interest not to exceed the maximum rate permitted by law per annum on the principal amount due, and costs, including, without limitation, reasonable attorney's fees actually incurred, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with late charges, interest, costs, including, without limitation, reasonable attorney's fees actually incurred, shall also be the personal obligation of the Person who was the Owner of such Lot at the time the assessment fell due. Each Owner shall be personally liable for his or her portion of each assessment coming due while he or she is the Owner of a Lot, and his or her grantee 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.

The Association shall, within five (5) days after receiving a written request therefor and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot shall be binding upon the Association as of the date of issuance.

Annual assessments shall be levied at a uniform rate per Lot 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, of the annual assessment for delinquents. Unless otherwise provided by the Board, the assessment shall be paid in annual installments.

Section 3. Computation of Annual Assessment. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year, which may include, if necessary, a capital contribution or reserve in accordance with a capital budget separately prepared.

The common assessment to be levied against each Lot for the coming year shall be set at a level which is reasonably expected to produce total revenue to the Association equal to the total budgeted operating costs of the Association. The Board shall cause the proposed budget and assessments to be levied against each Lot for the following year to be delivered to each member at least thirty (30) days prior to the end of the current fiscal year (or at least thirty (30) days prior to the due date of the first installment in the case of the initial budget). The budget and the assessment shall become effective unless disapproved at a meeting by a majority of the Total Association Vote. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason so to determine the

budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

Section 4. Special Assessments. In addition to the other assessments authorized herein, the Association may, at any time, levy special assessments against all Owners, notice of which shall be sent to all Owners. Any special assessment which would cause the average total of special assessments levied in one (1) fiscal year to exceed Two Hundred and No/100 Dollars (\$200.00) per Lot, shall be approved by a majority of the Total Association Vote prior to becoming effective. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

Section 5. Lien for Assessments. All sums assessed against any Lot pursuant to this Declaration, together with late charges, interest, costs, including, without limitation, reasonable attorney's fees actually incurred, as provided herein, shall be secured by a lien on such Lot in favor of the Association and the Association shall be entitled to file such a lien in the land records of Gwinnett County, Georgia. Such lien shall be superior to all other liens and encumbrances on such Lot, except for (a) liens for ad valorem taxes and (b) liens for all sums unpaid on a first Mortgage or on any Mortgage to Declarant duly recorded in the land records of Gwinnett County, Georgia and all amounts advanced pursuant to such Mortgage and secured thereby in accordance with the terms of such instrument.

All other Persons acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded in such records shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

Section 6. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments or installments thereof which are not paid when due shall be delinquent. 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 which shall not exceed fifteen percent (15%) of the assessment payment. The Association shall cause a notice of delinquency to be given to any member who has not paid within ten (10) days following the due date. If the assessment is not paid within thirty (30) days, a lien, as herein provided, shall attach and, in addition, the lien shall include interest not to exceed the maximum rate permitted by law per annum on the principal amount due from the date first due and payable, all late charges, all costs of collection, including, without limitation, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid after sixty (60) days, the Association may, as the Board shall determine, institute suit to collect such amounts and/or to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents 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 aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the same. In addition to the other remedies provided herein, the Association shall have the right to suspend the voting rights of a Lot Owner for any period during which any assessment against such Owner's Lot which is hereby provided for remains unpaid.

In the event that any assessment or other charge is delinquent for sixty (60) days and the amount owed is in excess of the dollar amount equal to three (3) times the monthly assessment owed by a Lot Owner, then, in addition to all other rights provided herein, upon no less than ten (10) days written notice,

the Association shall have the right to suspend any utility or services to the Lot paid for as a Common Expense by the Association. Any costs incurred by the Association in discontinuing and/or reconnecting any utility or service, including reasonable attorney's fees, shall be an assessment against the Lot. The utility or service shall not be required to be restored until all sums owed the Association are paid in full, at which time the Association shall make arrangements for restoration of the utility or service. A Lot Owner whose utility or service has been suspended hereunder shall not be entitled to use any such utility or service from any source, and any such unauthorized use shall be considered a theft of services under O.C.G.A. Section 16-8-5.

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

All payments shall be applied first to costs and attorney's fees, then to late charges, then to interest and then to delinquent assessments.

Section 7. Date of Commencement of Assessments. Assessments shall commence as to a Lot on the first day of the month following the conveyance of the Lot to a Person other than the Declarant. Notwithstanding anything to the contrary stated herein, the Declarant shall not be responsible for the payment of any type of assessment, except that assessments shall commence on Lots containing occupied residences (but excluding those Lots containing model homes or a sales center) that are owned by Declarant on the first day of the month following the occupancy of the residence located on the Lot. Assessments shall be due and payable in a manner and on a schedule as the Board of Directors may provide. The first annual common assessment shall be adjusted according to the number of months then remaining in that fiscal year.

Section 8. Specific Assessments. The Board shall have the power to specifically assess pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors 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 Article V of the Bylaws and the costs of maintenance performed by the Association for which the Owner is responsible for under Article XII, Sections 1 and 2 of this Declaration 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 in the Community may be specifically assessed equitably among all of the Lots which are benefited according to the benefit received; and

(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.

Section 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, and 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 such a loan in the local area of the Community. The Declarant in its sole discretion may guarantee repayment of such loan, if required by the lending institution, but no Mortgage secured by the Common Property or any of the improvements maintained by the Association shall be given in connection with such loan.

Section 10. Working Capital Fund. The Declarant, on behalf of the Association, shall establish a working capital fund to meet unforeseen expenditures or to purchase any additional equipment or services for the Association. A non-refundable contribution to the working capital fund of the Association shall be paid to the Association by the purchaser of a Lot at the closing of each sale or resale of a Lot, in the amount of two (2) months of the general assessment charged to such Lot. In the event such non-refundable contribution to the working capital fund of the Association is not paid in accordance with this Section 10, such amount shall be a specific assessment against such Lot.

ARTICLE VI

Insurance and Casualty Losses

Section 1. Insurance on Common Property. The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Property and, at the option of the Board of Directors, shall have the authority, but not the obligation, to obtain insurance for the residence and other improvements on Lots. This insurance shall provide, at a minimum, fire and extended coverage, including vandalism and malicious mischief, 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. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

The Board 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 and No/100 Dollars (\$1,000,000.00).

Premiums for all insurance obtained by the Association shall be a Common Expense of the Association. The policies may contain a reasonable deductible, and the deductible amount shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

All insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee for the respective benefited parties, except as otherwise provided above and shall be governed by the provisions set forth below:

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

(b) All policies on the Common Property shall be for the benefit of the Association and its members. Any policies covering improvements on Lots shall be for the benefit of the Owners and their mortgagees, as their interests may appear.

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

(d) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors 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.

(e) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available and all insurance policies shall be reviewed annually by one or more qualified persons, at least one of who must be in the real estate industry and familiar with construction in the county where the Community is located.

(f) The deductible amount per occurrence for coverage shall not exceed Five Thousand and No/100 Dollars (\$5,000.00).

(g) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

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

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

(iii) a statement that no policy may be canceled, invalidated, or suspended on account of any one or more individual Owners;

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

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

(vi) a statement that no policy may be canceled, subjected to nonrenewal or substantially modified without at least thirty (30) days' prior written notice to the Association.

In addition to the other insurance required by this Article VI, Section 1, the Board shall obtain directors' and officers' liability coverage, 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. The amount of fidelity coverage shall be determined in the directors' best business judgment, but if reasonably available, shall not be less than three (3) months assessments plus a reasonable amount to cover all or a reasonable portion of reserve funds in the custody of the Association at any time during the term of the bond. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled, subjected to nonrenewal or substantially modified without at least thirty (30) days prior written notice to the Association. The Association shall also obtain construction code endorsements, and flood insurance, if and to the extent necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

Section 2. Individual Insurance. If the Association does not maintain insurance on the residence and other improvements on Lots, each Owner, by virtue of taking title to a Lot subject to the terms of this Declaration, covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all-risk casualty insurance on the Lot and all structures constructed thereon and a liability policy covering damage or injury occurring on a Lot. If reasonably available, the casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an "all-risk" policy, including vandalism and malicious mischief, 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. If all-risk coverage is not reasonably available, Owners shall obtain, at a minimum, fire and extended coverage on his or her Lots and structures constructed thereon meeting the same requirements as set forth in Article VI, Sections 1(g)(i) and 1(g)(iii) for insurance on the Common Property. The deductible amount per occurrence for coverage obtained by an Owner shall not exceed Five Thousand and No/100 Dollars (\$5,000.00). The policies required hereunder shall be in effect at all times. Upon request by the Association, an Owner shall furnish a copy of his/her insurance policy or policies to the Board. In the event that any Owner fails to obtain and maintain insurance, as required by this Section, the Association may purchase such insurance on behalf of the Owner and specifically assess the cost thereof to the Owner pursuant to Article V, Section 8 of this Declaration, to be collected in the manner provided for collection of Common Expenses under this Declaration.

Each Owner further covenants and agrees that in the event of damage and destruction of structures on his Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article VIII of this Declaration, unless a determination not to rebuild is made in accordance with Section 4 of this Article VI. The Owner shall pay any costs of repair or reconstruction which is not covered by insurance proceeds. In the event that the structure is totally destroyed and a determination is made not to rebuild or to reconstruct, the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction and thereafter the Owner shall continue to maintain the Lot in a neat and attractive condition consistent with the Community-Wide Standard.

Section 3. Insurance Deductibles. In the event of an insured loss, any required deductible shall be considered a maintenance expense to be paid by the Person or Persons who would be responsible for such loss in the absence of insurance. If the loss affects more than one Lot or a Lot and the Common Property, the cost of the deductible may be apportioned equitably by the Board among the parties suffering loss in accordance with the total cost of repair. Notwithstanding this, if the insurance policy provides that the deductible will apply to each Lot separately or to each occurrence, each Owner shall be responsible for paying the deductible pertaining to his or her Lot, if any. If any Owner or Owners fail to pay the deductible when required under this Article VI, Section 3, then the Association can pay the deductible and assess the cost to the Owner or Owners pursuant to Article V, Section 8 of this Declaration.

Section 4. Casualty Losses. In the event of damage to or destruction of all or any part of the Community as a result of fire or other casualty, unless eighty percent (80%) of the Total Association Vote other than Declarant, including the Owner or Owners of the damaged Lot or Lots, and the Declarant vote not to proceed with the reconstruction and repair of the structure, the Board of Directors or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the structure. The Declarant's vote is required hereunder only as long as the Declarant has the right to appoint and remove directors and officers of the Association as provided in Article III, Section 2 of the Bylaws. In the event of substantial damage or destruction, each institutional holder of a first Mortgage shall be entitled to written notice of the damage, and nothing in these documents shall be construed to afford a priority to any Owner with respect to the distribution of proceeds to any such Lot.

(a) Cost Estimates. Immediately after a fire or other casualty causing damage to the Community, the Board of Directors shall obtain reliable and detailed estimates of the cost of repairing and restoring the structures (including any damaged Lot) to substantially the condition which existed before such casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Such costs may also include professional fees and premiums for such bonds as the Board of Directors determines to be necessary.

(b) Source and Allocation of Proceeds. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair, as determined by the Board of Directors, or if at any time during the reconstruction and repair or upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, a special assessment shall be made against all of the Owners without the necessity of a vote of the members or compliance with Article V, Section 4 above. If after repair and reconstruction is completed there is a surplus of funds, such funds shall be common funds of the Association to be used as directed by the Board of Directors.

(c) Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the plans and specifications under which the Community was originally constructed, except where changes are necessary to comply with current applicable building codes or where improvements not in accordance with the original plans and specifications are approved by the Board of Directors. To the extent insurance proceeds are available, the Association may reconstruct or repair owner improvements damaged as a result of fire or other casualty.

(d) Encroachments. Encroachments upon or in favor of Lots which may be created as a result of such reconstruction or repair shall not constitute a claim or basis for any proceeding or action by the Owner upon whose property such encroachment exists, provided that such reconstruction was substantially in accordance with the architectural plans under which the Community was originally constructed. Such encroachments shall be allowed to continue in existence for so long as the reconstructed building shall stand.

(e) Construction Fund. The net proceeds of the insurance collected on account of a casualty and the funds collected by the Association from assessments against the Owners on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair in the manner set forth in this Article VI, Section 4(e) to be disbursed by the Association in appropriate progress payment to such contractor(s), supplier(s), and personnel performing the work or supplying materials or services for the repair and reconstruction of the buildings as are designated by the Board of Directors.

ARTICLE VII
Condemnation

In the event of a taking by eminent domain of any portion of the Common Property on which improvements have been constructed, then, unless within sixty (60) days after the taking, Owners holding at least eighty percent (80%) of the Total Association Vote other than Declarant and the Declarant otherwise agree, the Association shall restore or replace the improvements taken on the remaining land included in the Common Property to the extent lands are available. The Declarant's vote is required hereunder only as long as the Declarant has the right to appoint and remove directors and officers of the Association as provided in Article III, Section 2 of the Bylaws. The provisions of Article VI, Section 4, above, applicable to Common Property improvements damage, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

ARTICLE VIII
Architectural Standards

Section 1. Architectural Control Committee.

(a) During Declarant Control. During the time in which the Declarant has the right to appoint directors and officers of the Association under Article III, Section 2 of the Bylaws, there shall be no Architectural Control Committee ("ACC") and all encroachments onto the Common Property, exterior change, alteration or construction (including painting and landscaping), and any erection, placement or posting of any object, sign, clothesline, speaker, playground equipment, light, fountain, flag, or thing on the exterior or roof of the residence on a Lot, in any windows (except window treatments and signs as provided in this Article), must receive the prior written approval of the Declarant; except that reasonable seasonal decorations (but excluding all forms of seasonal decorative lights) may be displayed between Thanksgiving and January 15th on the door frame of the door of the residence. Granting or withholding such approval shall be within the sole discretion of the Declarant. All references in the Declaration, the Bylaws and the rules and regulations to the Architectural Control Committee or ACC shall refer to the Declarant during the period the Declarant has the right to appoint the officers and directors of the Association.

(b) After Declarant Control. After such time as the Declarant's right to appoint officers and directors of the Association as provided in Article III, Section 2 of the Bylaws has expired, an ACC shall be appointed by the Board of Directors and except for the Declarant, so long as the Declarant shall own a Lot for sale, no Owner, Occupant, or any other person may make any encroachment onto the Common Property, or make any exterior change, alteration, or construction (including painting and landscaping), nor erect, place or post any object, sign, clothesline, speaker, playground equipment, light, fountain, flag, or thing on the exterior or roof of the residence on a Lot, in any windows (except window treatments and signs as provided herein), or on any other Common Property, without first obtaining the written approval of the ACC; except that reasonable seasonal decorations (but excluding all forms of seasonal decorative lights) may be displayed between Thanksgiving and January 15th on the door frame of the residence. The standard for approval of such improvements shall include, but not be limited to, aesthetic consideration, materials to be used, harmony with the external design of the existing buildings, Lots and structures, and the location in relation to surrounding structures and topography. Notwithstanding the above, Declarant shall not be required to obtain any approvals under this Article.

Section 2. Applications. Applications for approval of any such architectural modification shall be in writing and shall provide such information as the ACC may reasonably require. The ACC or its designated representative shall be the sole arbiter of such application and may withhold approval for any

reason, including purely aesthetic considerations, and it shall be entitled to stop any construction which is not in conformance with approved plans. The Board or the ACC may publish written architectural standards for exterior and Common Property alterations or additions, and any request in substantial compliance therewith shall be approved.

If the ACC or its designated representative fails to approve or to disapprove such application within forty-five (45) days after the application and such information as the ACC may reasonably require shall have been submitted, its approval will not be required and this Section will be deemed complied with; provided, however, even if the requirements of this Section are satisfied, nothing herein shall authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of the Declaration, the Bylaws, the design standards, the Association's rules and regulations, or applicable zoning ordinances.

Section 3. Encroachment onto Common Property. The ACC or the Board, subject to this Article VIII, Section 1, may allow such encroachments on the Common Property as it deems acceptable.

Section 4. Alterations to the Interior of a Residence Located on a Lot. There shall be no subdivision of Residences located on any Lot. Except as provided herein, no Owner or Occupant shall make any changes, alterations, modification or construction to the interior of a residence located on a Lot that involves connecting to a pipe, line, conduit and/or other apparatus for access to common utilities, or places an excessive load on any structural or load bearing portions of a residence or otherwise negatively impacts the structural integrity of the residence and any adjoining residences without first obtaining the prior written approval of the ACC. Such approval shall not be granted by the ACC unless the Owner has presented to the ACC a report and/or drawing prepared by a licensed structural engineer showing that compensating measures will be taken to ensure the structural integrity of the residence and any adjoining residences. All building code requirements must be complied with and necessary permits and approvals for the proposed change, alteration, modification or construction shall be secured by an Owner at Owner's sole expense.

Section 5. Condition of Approval. As a condition of approval for a requested architectural change, modification, addition, or alteration, an Owner, on behalf of himself or herself and his or her successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance to and on such change, modification, addition, or alteration. In the discretion of the Board or the ACC, an Owner may be made to verify such condition of approval by written instrument in recordable form acknowledged by such Owner on behalf of himself or herself and all successors-in-interest.

Section 6. Limitation of Liability. Review and approval of any application pursuant to this Article VIII may be made on any basis, including solely the basis of aesthetic considerations, and neither the Board nor the ACC shall bear any responsibility for ensuring the design, quality, structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes, zoning regulations and other governmental requirements. Neither the Association, the Board, the ACC, or member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner, design or quality of approved construction on or modifications to any Lot.

Section 7. No Waiver of Future Approvals. Each Owner acknowledges that the members of the Board and the ACC will change from time to time and that interpretation, application and enforcement of the architectural standards may vary accordingly. The approval of either the Board or the ACC of any proposals, plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval of the Board or the ACC, shall not constitute a waiver of any right to

withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

Section 8. Enforcement. Any construction, alteration, or other work done in violation of this Article VIII, the Declaration, the Bylaws or the design standards shall be deemed to be nonconforming. Upon written request from the Board, Owners shall, at their own cost and expense, remove such construction, alteration, or other work and shall restore the property to substantially the same condition as existed prior to the construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the Board or its designees shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as existed prior to the construction, alteration or other work. All costs thereof, including reasonable attorney's fees, may be assessed against the violating Lot Owner.

In addition to the above, the Board shall have the authority and standing, on behalf of the Association, to impose reasonable fines and to pursue all legal and equitable remedies available to enforce the provisions of this Article VIII and its decisions or those of the ACC. Furthermore, the Board shall have the authority to record in the Gwinnett County land records notices of violation of the provisions of this Article VIII.

If any Owner or Occupant makes any exterior change, alteration, or construction (including landscaping) upon the Common Property in violation of this Article VIII, he or she does so at his or her sole risk and expense. The Board may require that the change, alteration or construction remain on the Common Property without reimbursement to the Owner or Occupant for any expense he or she may have incurred in making the change, alteration or construction.

Section 9. Commencement of Construction. All improvements approved by the ACC hereunder must be commenced within six (6) months from the date of approval. If not commenced within six (6) months from the date of such approval, then such approval shall be deemed revoked by the ACC, unless the ACC gives a written extension for commencing the work. All work approved by the ACC hereunder shall be completed within ninety (90) days of commencement, unless otherwise agreed in writing by the ACC.

Section 10. Approval of Contractors, Landscapers and Architects. Any contractor, landscaper or architect, prior to performing any work on any Lot must first be approved by the Declarant or the ACC if there no longer is a Declarant, as to financial stability, building, landscaping or design experience and ability to build, landscape or design structures or grounds of the class and type of those which are to be built on the Community. Such approval may be granted or withheld in the sole and uncontrolled discretion of the ACC. Moreover, no person shall be approved as a contractor, landscaper or architect unless such Person obtains his income primarily from construction, landscaping or design of the type which the contractor, landscaper or architect is to perform upon the Lot, and has provided the Declarant or ACC, as applicable, evidence of public liability insurance and worker's compensation insurance.

ARTICLE IX Use Restrictions and Rules

Section 1. General. This Article IX, beginning at Section 2, sets out certain use restrictions which must be complied with by all Owners and Occupants of Lots. These use restrictions may only be amended in the manner provided in Article XVI, Section 1, regarding amendment of this Declaration. In addition, the Board may, from time to time, without consent of the Owners, adopt, modify, or delete rules

and regulations applicable to the Community. These rules shall be distributed to all Owners prior to the date that they are to become effective and after distribution shall be binding upon all Owners and Occupants of Lots until and unless overruled, canceled, or modified, by the Declarant (until such time as the Declarant no longer has the right to appoint and remove directors and officers of the Association pursuant to Article III, Section 2 of the Bylaws) or by a majority of the Total Association Vote, at a regular or special meeting. Notwithstanding the above, until such time as the Declarant no longer has the right to appoint and remove directors and officers of the Association pursuant to Article III, Section 2 of the Bylaws, no rules and regulations which affect the Declarant may be adopted, modified, or deleted without the written consent of the Declarant.

Section 2. Residential Use. Each Lot shall be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Lot, except that the Owner or Occupant residing in a residence on a Lot may conduct such ancillary business activities within the residence so long as:

(a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside of the residence;

(b) the business activity does not involve visitation of the residence by employees, clients, customers, suppliers or other business invitees in greater volume than would normally be expected for guest visitation to a residential residence without business activity;

(c) the business activity conforms to all zoning requirements for the Community;

(d) the business activity does not increase traffic in the Community in excess of what would normally be expected for residences in the Community without business activity (other than by deliveries by couriers, express mail carriers, parcel delivery services and other such similar delivery services);

(e) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the Association's ability to obtain insurance coverage;

(f) the business activity is consistent with the residential character of the Community and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Community, and does not otherwise violate any other provision of the Association's legal instruments, as determined in the Board's discretion; and

(g) the business activity does not result in a materially greater use of Common Property facilities or Association services.

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) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the use of a Lot by an on-site management company operating on behalf of the Association shall not be considered a trade or business within the meaning of this Section.

If an Owner of a Lot is a corporation, partnership, trust or other legal entity not being a natural person, the entity shall designate in writing to the Board the name(s) of the person(s) who will occupy the

residence on the Lot. The designated person(s) to occupy the residence may not be changed more frequently than once every six (6) months.

Section 3. Use of Common Property. There shall be no obstruction of the Common Property, nor shall anything be kept, parked or stored on any part of the Common Property without the prior written consent of the Association, except as specifically provided herein.

With the prior written approval of the Board of Directors, and subject to any restrictions imposed by the Board, an Owner or Owners may reserve portions of the Common Property for use for a period of time as set by the Board. The Board of Directors shall be permitted to charge such Owner or Owners reasonable fees, as determined in the Board's sole discretion, in connection with the reservation and use of any portion of the Common Property. Any such Owner or Owners who reserve a portion of the Common Property as provided herein shall assume, on behalf of himself/herself/themselves and his/her/their guests, Occupants and family, all risks associated with the use of the Common Property and all liability for any damage or injury to any person or thing as a result of such use. The Association shall not be liable for any damage or injury resulting from such use unless such damage or injury is caused solely by the willful acts or gross negligence of the Association, its agents or employees.

Section 4. Occupants Bound. All provisions of the Declaration, Bylaws and of any rules and regulations, use restrictions or design guidelines promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to Occupants even though Occupants are not specifically mentioned. The Owner shall be responsible for ensuring that an Occupant, and the guests, invitees and licensees of an Owner or Occupant strictly comply with all provisions of the Declaration, Bylaws, and any rules and regulations adopted by the Board of Directors. Fines may be levied against Owners or Occupants. If a fine is levied against an Occupant and is not timely paid, the fine may then be levied against the Owner.

Section 5. Signs. Except as may be required by legal proceedings, no signs, advertising posters or billboards of any kind shall be erected or placed by an Owner, Occupant or other Person, or permitted to remain on the Community without the prior written consent of the Board or its designee, except that one (1) professional security sign not to exceed six inches (6") by six inches (6") in size may be displayed from within a residence on a Lot and one (1) professionally lettered "For Sale" sign not to exceed two feet (2') by two feet (2') in size may be displayed from within the residence offered for sale. The Board shall have the right to erect reasonable and appropriate signs on behalf of the Association. The Board also shall have the authority to adopt regulations permitting temporary signs on Lots announcing births, birthdays or other events for limited periods of time. This Section 5 shall not apply to the Declarant.

Section 6. Vehicles and Parking. No Owner or Occupant may keep or bring onto the Community more than a reasonable number of vehicles per Lot at any time, as determined by the Board; provided, however, the Board may adopt reasonable rules limiting the number of vehicles which may be parked at the Community and the designated location thereof. Vehicles only may be parked in parking spaces that are assigned to Lots as Exclusive Common Property, if any, in designated parking spaces or other in areas authorized in writing by the Board. However, under no circumstances shall vehicles be parked on the street (excluding limited street parking for guests of an Owner attending a party or function at a Lot).

Disabled and stored vehicles are prohibited from being parked on the Community. For purposes of this Article IX, Section 6, a vehicle shall be considered "disabled" if it does not have a current license tag or

is obviously inoperable. A vehicle shall be considered "stored" if it remains on the Community for fourteen (14) consecutive days or longer without prior written Board permission.

Boats, campers, limosines, trailers, buses, trucks with a load capacity of one (1) ton or more, and recreational vehicles (RV's and motor homes), are prohibited from being parked on the Community; provided, however, motorcycles and vehicles used for commercial purposes and vehicles with commercial writings which meet requirements of this Section may be parked in parking spaces on the Community in accordance with these regulations. Trucks not meeting the requirements of this Section shall be allowed temporarily on the Community during normal business hours for the purpose of serving any Lot or the Common Property; provided that no such vehicle shall remain on the Lot or the Common Property overnight for any purpose unless prior written consent of the Board is first obtained.

If any vehicle is parked on any portion of the Community in violation of this Article IX, Section 6 or in violation of the Association's rules and regulations, the Board may place a notice on the vehicle specifying the nature of the violation and stating that after twenty-four (24) hours the vehicle may be towed. The notice shall include the name and telephone number of a person to contact regarding the alleged violation. A notice also shall be conspicuously placed at the Community stating the name and telephone number of the person or entity which will do the towing. If twenty-four (24) hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six (6) months of such notice, the vehicle may be towed in accordance with the notice, without further notice to the vehicle owner or user.

If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's or Occupant's Lot, residence or Exclusive Common Property assigned to a Lot, is obstructing the flow of traffic, is parked on any grassy area, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed immediately. If a vehicle is towed in accordance with this Article IX, Section 6, neither the Association nor any officer or agent of the Association shall be liable to any person for any claim of damage as a result of the towing activity. The Association's right to tow is in addition to, and not in limitation of all other rights of the Association, including the right to assess fines. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow.

Section 7. Garage Sales. No garage sale, yard sale, flea market, or similar activity shall be conducted in any portion of the Community without prior written Board consent. If so permitted, any such activities shall be subject to all reasonable conditions that the Board may impose.

Section 8. Animals and Pets. No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot or the Common Property, except that a reasonable number of generally recognized household pets may be kept provided that no Owner or Occupant may keep more than a total of two (2) dogs and/or cats per Lot. No Owner or Occupant may keep, breed or maintain any pet for any commercial purpose, and no structure for the care, housing, or confinement of any pet, such as dog houses and dog runs, shall be constructed or maintained on any part of the Community without prior written ACC approval. Notwithstanding the foregoing, pets may be kept in fenced areas approved under Article VIII or in areas where the pet is restricted by an electronic fence. Pets must be kept on a leash at all times when on the Common Property and on the Lot of another Owner. When on the Common Property, pets must be under voice command or the physical control of a responsible person at all times. Feces left by pets upon the Common Property must be removed by the owner of the pet or the person responsible for the pet.

No potbellied pigs, snakes, or other animals determined in the Board's sole discretion to be dangerous may be brought onto or kept on the Community at any time. Furthermore, any pet that is permitted to roam free, or in the Board's sole discretion, endangers the health of any Owner or Occupant, makes objectionable noise, or constitutes a nuisance or inconvenience to the Owners or Occupants or to the owner of any property located adjacent to the Community, may be permanently removed by the Board from the Community upon seven (7) days written notice to the owner of such pet. If the Owner or Occupant fails to remove the pet from the Community, the Board may remove the pet. Notwithstanding the foregoing, any pet which, in the Board's sole discretion, presents an immediate danger to the health, safety or property of any Community member may be removed by the Board without prior written notice to the pet's owner.

All Owners and Occupants keeping pets within the Community shall comply with all applicable governmental ordinances and regulations. Without prejudice to the Board's right to remove any such household pets, the Board may prohibit a household pet that has caused damage or injury from being walked in the Community. Animal control authorities shall be permitted to enter the Community to patrol and remove pets. Pets shall also be registered, licensed and inoculated as required by law. Furthermore, any Owner or Occupant who keeps or maintains any pet upon the Community shall be deemed to have agreed to indemnify and hold the Association, its directors, officers, and agents free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the Community.

Section 9. Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkept condition on his or her Lot. No Lot on the Community shall be used, in whole or in part, for the storage of any property or thing that will cause a Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will discharge foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the surrounding property. No noxious or offensive activity shall be carried on, on the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any property on the Community. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community. Without limiting the generality of the foregoing, no horn, whistle, siren, bell, amplifier or other sound device, except for devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Lot unless required by law. However, any siren or device for security purposes shall contain a device which causes it to automatically shut off within fifteen (15) minutes.

Section 10. Unsightly or Unkept Conditions. The pursuit of hobbies or other activities which might tend to cause disorderly, unsightly, or unkept conditions, including without limitation, the assembly and disassembly of motor vehicles and other mechanical devices, shall not be pursued or undertaken on any part of the Community. Clothing, clotheslines, bedding, rugs, mops, appliances, indoor furniture, and other household items shall not be placed or stored outside the residence. Only appropriate outdoor items, such as neatly stacked firewood, patio furniture and grills may be kept on the patio serving the Lot.

Section 11. Window Treatments. Unless otherwise approved in writing by the Board, all windows which are part of a Lot shall have window treatments and any portion thereof visible from outside the residence shall be white or off-white in color. Bed sheets shall not be used as window treatments.

Section 12. Air Conditioning Units. No window air conditioning units may be installed. Unless otherwise placed on a Lot by the Declarant, condensing units for air conditioners shall only be

located in the rear or along the side of a residence constructed upon a Lot and shall be screened so as to be concealed from view of neighboring Lots, Common Property and all streets which border the Lot.

Section 13. Antennas and Satellite Dishes. Except as provided below, no satellite dish, antenna or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained on any portion of the Community; provided, however, that the Association shall have the right to erect, construct and maintain such devices. The following shall apply to all Owners:

(a) No transmission antenna, of any kind, may be erected anywhere on the Community without written approval of the Board of Directors or the ACC.

(b) No direct broadcast satellite (DBS) antenna or multi-channel multi-point distribution service (MMDS) antenna larger than one (1) meter in diameter shall be placed, allowed or maintained upon the Community.

(c) DBS and MMDS satellite dishes or antennas one (1) meter or less in diameter and television broadcast service antennas may only be installed in accordance with Federal Communication Commission (FCC) rules and the rules and regulations of the Association, both as may be amended from time to time.

In the event of a transfer of a Lot which includes the satellite dish or antenna, the Grantee shall assume all responsibility for the satellite dish or antenna and shall comply with this Declaration, the Bylaws and the rules and regulations regarding satellite dishes and antennas, including, but not limited to, those requirements relating to maintenance and removal of satellite dish or antenna.

Section 14. Fences. No fence or fencing-type barrier of any kind shall be placed, erected, allowed, or maintained upon any portion of the Community, including any Lot, without the prior written consent of the ACC. The ACC may issue guidelines detailing acceptable fence styles or specifications and locations. All applications for fencing shall be submitted in accordance with Article VIII of this Declaration. The ACC may require that all or a part of the fencing be painted in order to preserve architectural harmony within the Community.

Section 15. Recreational Areas. Any recreational area or other areas or equipment located on the Common Property shall be used at the risk of the user, and the Association shall not be held liable to any Person for any claim, damage, or injury occurring thereon or related to use thereof. No such equipment (including basketball goals) shall be erected, installed or placed on any Lot without the prior written consent of the ACC.

Section 16. Woodpiles, Etc. Woodpiles and other similar items shall be located in an area or screened in a manner as provided in the rules and regulations promulgated by the ACC from time to time. All construction debris, rubbish, trash, and garbage shall be disposed of in appropriate sealed bags and placed in the trash compactor located within the Community and shall not be allowed to accumulate on the exterior of a residence.

Section 17. Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Board or its designee. Declarant, however, hereby expressly reserves the right to replat any Lot or Lots owned by Declarant. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations.

Section 18. Outbuildings. No structures of a temporary character such as tents, shacks, carports, barns, tool sheds, dog houses, cages or coops or other outbuilding shall be erected by any Owner or Occupant on any portion of the Community, at any time, other than by Declarant.

Section 19. Tree Removal. No trees or shrubs on any portion of the Community shall be removed without the express written consent of the ACC.

Section 20. Firearms and Fireworks. The display or discharge of firearms or fireworks on the Common Property is prohibited; provided, however, that the display of lawful firearms on the Common Property is permitted for the limited purpose of transporting the firearms across the Common Property to or from the Owner's Lot. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size. The term "fireworks" shall include those items as listed in O.C.G.A. Section 25-10-1.

Section 21. Heating of Residences in Colder Months. In order to prevent breakage of water pipes during colder months of the year resulting in damage to the Community, increased Common Expenses, and increased insurance premiums or cancellation of insurance policies due to numerous damage claims, the thermostats within the residence on Lots shall be maintained with the heat in an "on" position and at a minimum temperature setting of sixty (60) degrees Fahrenheit (except during power failures or periods when heating equipment is broken) whenever the temperature is forecasted to or does reach thirty-two (32) degrees Fahrenheit or below. Owners and Occupants of Lots shall take all steps possible on a timely basis to keep heating equipment, including, but not limited to, the thermostat, in good working order and repair. At any time during the months specified above when the heating equipment is not working properly, the Owner or Occupant shall immediately inform the Association of this failure of the equipment and of the time needed to repair the equipment. All Owners and Occupants of Lots also shall be obligated to shut any and all cut-off valves for any and all outdoor spigots whenever the temperature is forecasted to or does reach thirty-two (32) degrees Fahrenheit or below. Notwithstanding any provision in this Declaration or in the Bylaws to the contrary, the Board of Directors, without a prior warning, demand or hearing, may fine any Owner or Occupant up to Five Hundred and No/100 Dollars (\$500.00) or may cause the water service to the violator's Lot to be discontinued for violation of this Article IX, Section 21, in addition to any other remedies of the Association. Any fine imposed pursuant to this Article IX, Section 21 shall be deemed an assessment against the Lot and may be collected in the same manner as provided herein for collection of assessments.

Section 22. Abandoned Personal Property. Personal property, except for personal property owned by the Association, is strictly prohibited from being stored, kept, or allowed to remain for a period of more than twenty-four (24) hours upon any portion of the Common Property or on the rights-of-way located within the Community. If the Board or its designee, in its sole discretion, determines that property is kept, stored, or allowed to remain on the Common Property or on the rights-of-way located on the Community in violation of this Article IX, Section 22, then the Board may remove and either discard or store the personal property in a location which the Board may determine. If personal property is removed in accordance with this Article IX, Section 22, neither the Association nor any officer or agent of the Association shall be liable to any Person for any claim of damage resulting from the removal activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to remove abandoned or improperly stored personal property, as set forth herein.

Section 23. Impairment of Residences and Easements. An Owner shall do no act nor any work that will impair the structural soundness or integrity of any residence or impair any easement or other

interest in real property, nor do any act nor allow any condition to exist which will adversely affect the other Lots or their Owners or Occupants.

Section 24. Mail Slot. The Declarant may provide a mail slot located in the mailbox building for each Lot.

Section 25. Patios and Front Entry Porches. Objects over forty-two (42) inches in height, laundry garments, towels and objects other than potted plants and patio furniture, except as may be authorized by the Board, shall not be placed on a patio or front entry porch. Objects shall not be permitted to hang over or be attached to any patio or front entry porch or to otherwise protrude outside of the vertical plane formed by the exterior surface of the patio or front entry porch. Enclosure of a patio or front entry porch is also prohibited. As used herein, "enclosure" shall mean the permanent enclosure of a patio or front entry porch into the heated and cooled space of a residence located on a Lot.

Section 26. Grilling. The use of outdoor grills on any portion of the Community, including, without limitation, a patio, shall be governed by applicable state laws and local ordinances having jurisdiction over the Community. Grilling shall be prohibited on front entry porches.

ARTICLE X Leasing

The Board shall have the power to make and enforce reasonable rules and regulations and to fine, in accordance with the Declaration and Bylaws, in order to enforce the provisions of this Article X.

Section 1. Definition. "Leasing," for purposes of this Declaration, is defined as regular, exclusive occupancy of a Lot by any person(s) other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. For purposes hereof, occupancy by a roommate of an Owner shall not constitute leasing.

Section 2. Leasing Provisions. Leasing of Lots shall be governed by the following provisions:

(a) General. Lots may be leased only in their entirety; no fraction or portion of a Lots may be leased without prior written Board approval.

All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. The Board may maintain and, upon request, provide a form which is deemed acceptable. There shall be no subleasing of Lots or assignment of leases without prior written Board approval. All leases must be for an initial term of not less than one (1) year, except with written Board approval, which shall not be unreasonably withheld in cases of undue hardship. Within ten (10) days after executing a lease agreement for the lease of a Lot, the Owner shall provide the Board with a copy of the lease and the name of the lessee and all other people occupying the Lot. The Owner must provide the lessee copies of the Declaration, Bylaws, and the rules and regulations. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed lessee; the Board's approval or disapproval shall be limited to the form of the proposed lease.

(b) Compliance With Declaration, Bylaws, and Rules and Regulations, Use of Common Property, and Liability for Assessments. Each Owner and each lessee, by occupancy of a Lot, covenants and agrees that any lease for a Lot shall contain the following language and agrees that if such

language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant on the Lot:

(i) Compliance With Declaration, Bylaws, and Rules and Regulations. The lessee shall comply with all provisions of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto and shall control the conduct of all other Occupants and guests of the leased Lot in order to ensure such compliance. The Owner shall cause all Occupants of his or her Lot to comply with the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations by such Occupants, notwithstanding the fact that such Occupants of the Lot are fully liable and may be sanctioned for any such violation. If the lessee, or a person living with the lessee, violates the Declaration, Bylaws, or a rule or regulation for which a fine is imposed, notice of the violation shall be given to the Owner and the lessee, and such fine may be assessed against the lessee in accordance with the Bylaws. If the fine is not paid by the lessee within the time period set by the Board, the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Lot.

Any violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto by the lessee, any Occupant, or any guest of lessee, is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with Georgia law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof. If the Association proceeds to evict the lessee, any costs, including attorney's fees and court costs, associated with the eviction shall be an assessment and lien against the Lot.

(ii) Use of Common Property. The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Property, including, but not limited to, the use of any and all recreational facilities.

(iii) Liability for Assessments. When an Owner who is leasing his or her Lot fails to pay any annual or special assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board, lessee shall pay to the Association all unpaid annual, special and specific assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by lessee. However, lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If lessee fails to comply herewith, lessee shall pay to the Association all amounts authorized under the Declaration as if lessee were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

Section 3. Applicability of this Article X. This Article X, shall not apply to any leasing transaction entered into by the Declarant or the holder of any first Mortgage on a Lot who becomes the Owner of a Lot through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage.

ARTICLE XI

Sale of Lots

An Owner intending to make a transfer or sale of a Lot or any interest in a Lot shall give the Board written notice of such intention within seven (7) days after execution of the transfer or sales documents. The Owner shall furnish the Board, as part of the notice, the name and address of the intended grantee and such other information as the Board may reasonably require. This Paragraph shall not be construed to create a right of first refusal in the Association or in any third party.

In addition, a non-refundable contribution to the working capital fund of the Association shall be paid to the Association by the purchaser of a Lot at the closing of each sale or resale of a Lot in the amount of two (2) months of the general assessment charged to such Lot.

Within seven (7) days after receiving title to a Lot, the purchaser of the Lot shall give the Board written notice of his or her ownership of the Lot. Upon failure of an Owner to give the required notice within the seven-day time period provided herein, the Board may levy fines against the Lot and Owner thereof, and assess the Owner for all costs incurred by the Association in determining his or her identity.

ARTICLE XII

Maintenance

Section 1. Association's Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility, which shall be deemed to include the following:

(a) maintenance, repair, and replacement subject to any insurance then in effect, of the Common Property, including, but not limited to, all Exclusive Common Property as defined herein, and all Common Property landscaping and grassy areas not included in a Lot, all roads, sidewalks and other concrete and paved areas not included in a Lot, the gazebo and recreation area, the water detention facility, the entry feature, the mailbox building and the trash compactor;

(b) maintenance and repair of all water and sewer pipes or facilities which serve more than one (1) Lot to the extent that such pipes and facilities are not maintained by the Owner as set forth below or by public, private, or municipal utility companies; and

(c) maintenance and repair of the following portions of the Lots:

(i) all roof surfaces above the wooden truss system including the plywood underdecking, felt and shingles, all gutters and all downspouts;

(ii) all exterior building surfaces (including all brick, siding and columns, if any, but excluding any and all wrought iron and metal surfaces and all decks and lattice attached to such decks);

(iii) all exterior painting (including painting of all shutters, trim and columns, if any); and

(iv) all lawn and landscape maintenance on a Lot (excluding landscaping on patios or front entry porches, if any, and excluding the replacement of any dead trees, shrubs or other landscaping anywhere on the Lot).

Specifically excluded from such Area of Common Responsibility shall be the following: (1) HVAC or similar equipment located outside the residence; (2) all doors (including screen and storm doors), hinges, frames, locks, and hardware which are part of the entry system, except the Association has the right but not the obligation to paint, stain and maintain the exterior portion of the front door; (3) hoses, vents or water spigots contained in exterior walls of the residence; (4) lighting fixtures pertaining to a particular residence and being located outside an entryway; (5) window screens, frames, hardware and glass except that the Association has the right but not the obligation to maintain the exterior window frames and hardware; (6) foundations and footings including waterproofing above and below grade; (7) pipes which serve only one Lot located within the Lot's boundaries or, if located in the front yard on the Lot, outside the Lot's boundaries, the portion of the pipe from the cutoff valve serving the Lot to the Lot itself, including the cutoff valve serving the Lot; and (8) all improvements made by any Owner or Occupant.

Upon resolution of the Board of Directors and approval of a majority of the members present or represented by proxy at a duly constituted meeting of the members, the Association may assume responsibility for providing additional exterior maintenance upon Lot improvements. The Association shall have the right, but not the obligation, to maintain other property not owned by the Association where the Board has determined that such maintenance would benefit all Owners.

The foregoing maintenance shall be performed consistent with the Community-Wide Standard.

The Association shall not be liable for injury or damage to person or property caused by the elements or by the Owner of any Lot, or any other person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Area of Common Responsibility or from any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder. The Association shall not be liable to the Owner of any Lot or such Owner's Occupant, guest, or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Property. The Association shall not be liable to any Owner, or any Owner's Occupant, guest or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Article XII, Section 1 where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

The Association shall repair incidental damage to any Lot resulting from performance of work which is the responsibility of the Association. Repairs to improvements on a Lot shall be completed only to the extent of being "paint-ready." Such repair and subsequent cleaning shall be performed based on a reasonableness standard and at the sole discretion of the Board of Directors. In performing its responsibilities hereunder, the Association shall have the authority to delegate such Persons, firms or corporations of its choice, such duties as are approved by the Board of Directors.

In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association, is caused through the willful or negligent act of an Owner, his or her family, guests, lessees, or invitees, and is not completely covered or paid for by insurance, then the Association may perform the maintenance, repair or replacement at the expense of the Owner, and all costs

shall be specifically assessed against the Owner and shall be added to and become a part of the assessment obligation of the Owner and shall become a lien against the Lot.

In performing its responsibility hereunder, the Association shall have the authority to delegate to such persons, firms or corporations of its choice, such duties as are approved by the Board of Directors.

Section 2. Owner's Responsibility. Except as provided in Article XII, Section 1 above, all maintenance of the Lot shall be the responsibility of the Owner thereof. In addition, the Owner shall maintain all pipes, lines, ducts, conduits, or other apparatus which serve only the Lot located within the Lot's boundaries or, if located outside the Lot's boundaries, the portion of the pipe from the cutoff valve serving the Lot (including all gas, electricity, water, sewer and air conditioning pipes, lines, ducts, conduits and other apparatus and the cut off valves for same serving only the Lot). The Owner shall also maintain and repair all doors and windows on the Lot except that the Association has the right but not the obligation to provide maintenance for the exterior of the front doors and the exterior of the window frames and hardware; provided that in the event that the Association decides not to maintain the exterior doors and window frames, each Owner shall have the obligation to so maintain his/her entry door and exterior window frames. Such maintenance shall be performed consistent with this Declaration and the Community-Wide Standard established pursuant hereto. Any maintenance which involves an exterior change, including, without limitation, repainting of the exterior of improvements in a different color, shall require prior approval of the Board or its designee pursuant to Article VIII of this Declaration.

Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to the Common Property by an Owner or Occupant which is the responsibility of the Association hereunder (including, but not limited to landscaping of Common Property) shall be prohibited; provided that if an Owner or Occupant should perform such maintenance, it shall be deemed to have been performed at the sole expense and risk of such Owner or Occupant, and the Owner or Occupant shall not be entitled to reimbursement from the Association even if the Association accepts the maintenance or repair.

Each Owner also shall be obligated:

- (a) To perform his or her responsibility in such manner so as not to unreasonably disturb other persons in other Lots.
- (b) To promptly report to the Association or its agent any defect or need for repairs, for which the Association is responsible.
- (c) Not to make any alterations in the portions of the Lot which are to be maintained by the Association or to remove any portion thereof or to make any additions thereto or do anything with respect to the exterior or interior of the Lot which would or might jeopardize or impair the safety or soundness of any Lot without first obtaining the written consent of the Board of Directors of the Association and all Owners and Mortgagees or the Lots affected, nor shall any Owner impair any easement without first obtaining written consent of the Association and of the Owner or Owners and their Mortgagees for whose benefit such easement exists.
- (d) To pay for the cost of repairing, replacing or cleaning up any item which is the responsibility of the Owner but which responsibility such Owner fails or refuses to discharge (which the Association shall have the right, but not the obligation, to do), or to pay for the cost of repairing, replacing or cleaning up any item which, although the responsibility of the Association, is necessitated by reason of

the willful or negligent act of the Owner, his or her family, tenants or guests, with the cost thereof to be added to and become part of the Owner's next chargeable assessment.

(e) To aid and assist the Association and its agents and employees as requested by the Association or its agents and employees, including, without limitation, removing, covering, shielding, or otherwise protecting any and all personal property in the areas to be maintained or repaired by the Association and its agents and employees in order for the Association and its agents and employees to conduct its maintenance and repair obligations on the Lots. The Association and its agents and employees shall not be liable for any injury, damage or loss to such personal property that is not removed, covered, shielded or otherwise protected by the Owner or Occupant of the Lot on which such personal property is located as requested by the Association or its agents and employees.

Section 3. Failure to Maintain. If the Board of Directors determines that: (a) any Owner has failed or refused to discharge properly his or her obligation with regard to the maintenance, repair or replacement of items of which he or she is responsible hereunder; or (b) that the need for maintenance, repair, or replacement which is in the Area of Common Responsibility is caused through the willful or negligent act of any Owner, his or her family, guests, lessees, or invitees, and is not covered or paid by insurance, in whole or in part, then, except in an emergency situation, the Association shall give the Owner written notice of the Association's intent to provide necessary maintenance, repair, or replacement at the Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board of Directors. In the case of (a) above where the Owner has not discharged his or her responsibility, unless the Board of Directors determines that an emergency exists, the Owner shall have ten (10) days within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair and diligently pursue completion thereof within ten (10) days. If the Board determines that an emergency exists or that an Owner has not complied with the demand given by the Association as herein provided, or that the need for maintenance or repair is in the Area of Common Responsibility as in the case of (b) above, then the Association may provide any such maintenance, repair or replacement at the Owner's sole cost and expense, and such costs shall be added to and become a part of the assessment to which such Owner is subject, shall become and be a lien against the Lot, and shall be collected as provided herein for the collection of assessments.

Section 4. Measures Related to Insurance Coverage.

(a) The Board of Directors, upon resolution, shall have the authority to require all or any Owner(s) to do any act or perform any work involving portions of the Community which are the maintenance responsibility of the Owner, which will, in the Board's sole discretion, decrease the possibility of fire or other damage to the Community, reduce the insurance premium paid by the Association for any insurance coverage or otherwise assist the Board in procuring or maintaining such insurance coverage. This authority shall include, but need not be limited to, requiring all Owners to turn off cutoff valves, which may now or hereafter be installed, during winter months for outside water spigots; requiring Owners to insulate pipes sufficiently or take other preventive measures to prevent freezing of water pipes; requiring Owners to install smoke detectors; requiring Owners to make improvements to the Owner's Lot; and such other measures as the Board may reasonably require so long as the cost of such work does not exceed Five Hundred and No/100 Dollars (\$500.00) per lot in any twelve (12) month period.

(b) In addition to, and not in limitation of, any other rights the Association may have, if any Owner does not comply with any reasonable requirement made by the Board of Directors pursuant to Article XII, Section 4(a) above, the Association, upon fifteen (15) days written notice (during which period

the Owner may perform the required act or work without further liability), may perform such required act or work at the Owner's sole cost and expense. Such cost shall be specifically assessed against the Owner and shall be added to and become a part of the assessment obligation of such Owner and shall become a lien against the Lot and shall be collected in the manner provided for collection of assessments. The Association shall have all rights necessary to implement the requirements mandated by the Board pursuant to this Article XII, Section 4(b), including, but not limited to, a right of entry during reasonable hours and after reasonable notice to the Owner or Occupant of the Lot, except that access may be had at any time without notice in an emergency situation.

Section 5. Maintenance Standards and Interpretation. The maintenance standards and the enforcement thereof and the interpretation of maintenance obligations under this Declaration may vary as the composition of the Board of Directors changes. These variances shall not constitute a waiver by the Board of the right to adopt and enforce maintenance standards under this Article XII. No decision or interpretation by the Board shall constitute a binding precedent with respect to subsequent decisions or interpretations of the Board.

ARTICLE XIII

Party Walls and Fences

Section 1. General Rules of Law to Apply. Each wall or fence, if any, built as a part of the original construction on the Lots which shall serve and or separate any two (2) adjoining Lots shall constitute a party wall or party fence, as applicable. To the extent not inconsistent with the provisions of this Article XIII, Section 1, the general rules of law regarding the party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Owner shall make no modification to party wall construction that may compromise acoustic privacy and fire rating.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall or fence shall be shared equally by the Owners who make use of the wall or fence.

Section 3. Damage and Destruction. If a party wall or fence is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the wall or fence may restore it. If other Owners thereafter use the wall or fence, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article XIII, shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

Section 5. Arbitration. In the event of any dispute arising concerning a party wall or fence, each party shall appoint one (1) arbitrator. Should any party refuse to appoint an arbitrator within ten days after written request by the Board of Directors, the Board shall appoint an arbitrator for the refusing party. The arbitrators appointed shall appoint one (1) additional arbitrator. The decision by a majority of all three (3) arbitrators shall be binding upon the parties and shall be a condition precedent to any right of legal action that either party may have against the other.

ARTICLE XIV
Mortgagee Provisions

The following provisions are for the benefit of holders of first Mortgages on Lots in the Community. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

Section 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 an Owner of a Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days;

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

(d) any proposed action which would require the consent of a specified percentage of Mortgage holders.

Section 2. Approval of Action. Unless two-thirds (2/3) of the first Mortgagees or Owners other than the Declarant give their consent, the Association shall not:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Property which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Property shall not be deemed a transfer within the meaning of this Article XIV, Section 2(a)) other than personal property of the Association;

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

(c) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Lots and of the Common Property (The issuance and amendment of architectural standards, procedures, rules, and regulations or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this Article XIV, Section 2(c);

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

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

Nothing contained in this Section 2 shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration for any of the acts set out in this Section 2.

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

Section 3. No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee 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.

Section 4. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

Section 5. Amendments by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

Section 6. VA/HUD Approval. As long as Declarant has the right to appoint and remove the directors and officers of the Association and so long as the Community is approved by HUD for insuring any Mortgage in the Community (as determined by consulting the current list of approved subdivisions regularly published by HUD and furnished to Mortgage companies) or the VA for guaranteeing any Mortgage in the Community (as determined by telephone inquiry to VA), the following actions shall require the prior approval of the VA and/or HUD, as applicable: annexation of additional property to the Community, except for annexation by Declarant in accordance with Article X, Section 1 hereof pursuant to a plan of annexation previously approved by the VA and/or HUD, as applicable; dedication of Common Property to any public entity; mergers and consolidations; dissolution of the Association; mortgaging of Common Property; and material amendment of the Declaration, the Bylaws, or the Articles of Incorporation of the Association.

Section 7. Applicability of this Article. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or Georgia law for any of the acts set out in this Article.

Section 8. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

ARTICLE XV
Easements

Section 1. Easements for Encroachment and Overhang. There shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and adjacent portion of the Common Property or as between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered (in accordance with the terms of this Declaration). The easement shall be five (5) feet, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Property or as between adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point. However, an easement for encroachment shall not exist if the willful conduct by an Owner, Occupant, or the Association caused the encroachment.

Section 2. Easements for Use and Enjoyment.

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

(i) the right, but not the obligation, 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 guests of Owners and tenants who may use the Common Property, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, his or her family, tenants, 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 recreational facilities in the Community for any period during which any assessment against his or her Lot which is provided for herein 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 as may be set forth in the Bylaws; provided, however, the lien and encumbrance of any such mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for any Lot or Owner, or the holder of any Mortgage, irrespective of when executed, encumbering any Lot or other property located within the Community (Any provision in this Declaration or in any such Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of any Lot or Owner, or the holder of any Mortgage, irrespective of when executed, encumbering any Lot or other property located within the Community.);

(iv) the right of the Association to dedicate or grant permits, licenses or easements over, under, through and across the Common Property to governmental entities for public purposes; and

(v) the right of the Association to dedicate or transfer all or any portion of the Common Property subject to such conditions as may be agreed to by the members of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by the affirmative vote of the Owners of at least two-thirds (2/3) of the Lots (other than Lots of Declarant so long as the consent of Declarant is required) and the consent of Declarant (so long as

Declarant owns any property for development and/or sale in the Community or has the right unilaterally to annex additional property to the Community).

(b) Any Owner may delegate his or her right of use and enjoyment in and to the Common Property and facilities located thereon to the members of his or her family, his or her tenants and guests. An Owner shall be deemed to have made a delegation of all these rights to the Occupants of the Owner's Lot, if leased.

Section 3. Easements for Street Lights and Utilities. There is reserved to the Declarant, and the Association, blanket easements upon, across, above and under all Lots on the Community for access, ingress, egress, installation, repairing, replacing and maintaining all utilities and services, including but not limited to all street lights serving the Common Property, and reading meters for: (a) all utilities serving the Community or any portion of the Common Property, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, (b) water runoff and storm drainage systems, (c) street lights, and (d) any other services such as, but not limited to, a master television antenna system, cable television system, master satellite system or security system which may be installed to serve the Community. It shall be expressly permissible for the Declarant, the Association, or the designee of either, to do or to authorize the installation, repairing, replacing, and maintaining of the wires, conduits, cables, bulbs and other equipment related to providing any such utility or service. Should a party furnishing any such utility or service request a specific license or easement by separate recordable document, the Declarant or Board, as applicable, shall have the right to grant such easement.

It shall also be expressly permissible for any agent or employee of any utility company to enter onto a Lot to read any utility meter. In the event a meter on a Lot is in a gated or fenced in area, such area shall be universally keyed for the utility company(ies) or at the request of the Association, such Owner shall provide the Association with a key to such area, to be used by the utility company. Neither the Declarant nor the Association shall be liable for any loss or damage due to its holding such key or use of such key for the purposes described above and each Owner shall indemnify and hold harmless the Declarant, the Association and its officers and directors against any and all expenses, including attorneys fees reasonably incurred by or imposed upon the Declarant, the Association or its officers or directors in connection with any action, suit or other proceeding (including settlement of such action, suit or proceeding) brought by the Owner or the Owner's family, tenants, guests, employees, invitees or licensees against the Declarant, the Association, its officers or directors, arising out of or relating to its holdings or use of such key for the purposes described above.

Section 4. Easement for Entry. In addition to the right of the Board to exercise self-help as provided in the Association's legal instruments, the Board shall have the right, but not the obligation, to enter upon any property on the Community for emergency, security, and safety reasons. This right may also be exercised by the agents of the Association, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. This right of entry shall include the right of the Board to enter to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard in the event an Owner or Occupant fails or refuses to cure the condition after request by the Board.

Section 5. Easement for Association Maintenance. Declarant expressly reserves a perpetual easement for the benefit of the Association across such portions of the Community, determined in the sole discretion of the Association, as are necessary to allow for the maintenance required pursuant to this

Declaration. This maintenance shall be performed with a minimum of interference to the quiet enjoyment to a Lot.

Section 6. Easements to Serve Additional Property. The Declarant and its duly authorized agents, representatives, and employees, as well as its successors, assigns, licensees, and mortgagees, shall have and hereby reserves an easement over the Common Property for the purposes of enjoyment, use, access, and development of the Additional Property described in Exhibit "B" attached hereto and incorporated herein, whether or not such Additional Property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Property for construction of roads and for connecting and installing utilities on the Additional Property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Property as a result of vehicular traffic connected with development of the Additional Property. Declarant further agrees that if the easement is exercised for permanent access to the Additional Property and such Additional Property or any portion thereof is not made subject to this Declaration, the Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of maintenance of any access roadway serving the Additional Property. Such agreement shall provide for sharing of costs based on the ratio which the number of residences on that portion of the Additional Property which is served by the easement and is not made subject to this Declaration bears to the total number of residences within the Community and on such portion of the Additional Property.

Section 7. Easement for Entry Features and Street Signs. There is hereby reserved to the Declarant, the Association, and the designee of either, an easement over and upon all of the Community for ingress to, egress from, installation, construction, landscaping and maintenance of entry features and street signs 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 all entry features and the right to grade the land under and around the entry features.

Section 8. Easements for Access, Ingress, and Egress. There is hereby reserved to each Lot Owner a perpetual non-exclusive easement over the Common Property roadways and walkways for the purpose of pedestrian and vehicular access, ingress, and egress between his/her Lot and any public roadway. Any conveyance or encumbrance of the Common Property shall be subject to this easement.

Section 9. Public in General. The easements and rights created in this Article XV do not, are not intended to, and shall not be construed to create any easements or rights in or for the benefit of the general public; provided, however, that nothing set forth herein shall in any way limit or restrict any existing easements or rights already granted to the public as such easements or rights are previously recorded in the Gwinnett County, Georgia records. The Board of Directors hereby reserves the right to close temporarily, to the extent reasonably practicable, upon fifteen (15) days prior written notice (which may be given by posting in conspicuous locations upon the relevant portion of the Community), all or any portion of the Community which, in the reasonable opinion of the Board, may be legally necessary to prevent a dedication thereof, or any accrual of any rights therein, in the general public or in any Person other than the Persons for which such easements are expressly created in this Declaration.

ARTICLE XVI **General Provisions**

Section 1. Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if an amendment is necessary to bring any provision into compliance with any applicable governmental statute, rule, or regulation or judicial determination with which it is in conflict; (b)

if an 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 an amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable the lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or (d) if an amendment is necessary to enable any governmental agency or reputable private insurance company to insure or guarantee Mortgage loans on the Lots subject to this Declaration, However, any such amendment shall not adversely affect the title to any Owner's Lot unless the Owner consents to the amendment in writing. Further, until Declarant no longer has the right to appoint and remove directors and officers of the Association pursuant to Article III, Section 2 of the Bylaws, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owner; nor shall it adversely affect title to any Lot without the consent of the affected Owner.

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination of affirmative vote and written consent, of Owners holding at least two-thirds (2/3) of the Total Association Vote. As long as Declarant has the right to appoint and remove directors and officers of the Association as provided in Article III, Section 2 of the Bylaws, any amendment to this Declaration shall require the written consent of the Declarant. Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified in the amendment. No provision of this Declaration which reserves, grants, or exempts special rights or exemptions to the Declarant shall be amended without the Declarant's prior written consent so long as the Declarant owns any property in the Community primarily for development and/or sale.

Section 2. Duration. The covenants, restrictions and easements of this Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent permitted by law. However, so long as Georgia law limits the period during which covenants restricting lands to certain uses may run, any provision of this Declaration affected by the law shall run with and bind the land so long as permitted by the law, after which time the provisions shall be automatically extended for successive periods of twenty (20) years, unless fifty-one percent (51%) of the persons owning plots execute a document to terminate the covenants containing a legal description of the entire area affected by the covenant, a list of all owners affected by the covenant and a description of the covenant to be terminated or such other requirement as provided in O.C.G.A. § 44-5-60. A written instrument reflecting any termination must be recorded no sooner than, but within two years immediately preceding the beginning of a twenty (20) year renewal period. Every purchaser or grantee of any interest (including, without limitation, a security interest) in any interest (including, without limitation, a security interest) in any real property subject to this Declaration, by acceptance of a deed or other conveyance, agrees that provisions of this Declaration may be extended and renewed as provided in this Article XVI, Section 2.

Section 3. Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to make the Community safer than they otherwise might be. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE COMMUNITY. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE FOR FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY LOT, AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER, ACKNOWLEDGE THAT THE ASSOCIATION, AND ITS BOARD

OF DIRECTORS, DECLARANT, ANY SUCCESSOR DECLARANT, AND ACC DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM, OR OTHER SECURITY SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY THE DECLARANT OR THE ACC, IF ANY, MAY NOT BE COMPROMISED OR CIRCUMVENTED; NOR THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS, IF ANY, WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, ASSAULT OR OTHERWISE; NOR THAT FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS, IF ANY, WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. ALL OWNERS AND OCCUPANTS OF ANY LOT, AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER, ACKNOWLEDGE AND UNDERSTAND THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT ARE NOT INSURERS. ALL OWNERS AND OCCUPANTS OF ANY LOT AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER ASSUME ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS, AND TO THE CONTENTS OF LOTS AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, OCCUPANT, OR ANY TENANT, GUEST, OR INVITEE OF ANY OWNER RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS, IF ANY, RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTIES.

Section 4. Dispute Resolution. Any Owner or Occupant must give written notice to the Board requesting a hearing with the Board and attend such hearing to discuss amicable resolution of any dispute before that Owner or Occupant files any lawsuit against the Association, the Board, any director, or any agent of the Association. The Owner or Occupant shall, in such notice and at the hearing, make a good faith effort to explain the grievance to the Board and resolve the dispute in an amicable fashion, and shall give the Board a reasonable opportunity to address the Owner's or Occupant's grievance before filing suit. Upon receiving a request for a hearing, the Board shall give notice of the date, time and place of the hearing to the person requesting the hearing. The Board shall schedule this hearing for a date no less than seven (7) nor more than twenty-one (21) days from the date of receipt of the notice of hearing by the person requesting the hearing.

Section 5. No Discrimination. No action shall be taken by the Association or the Board of Directors which would unlawfully discriminate against any person on the basis of race, creed, color, national origin, religion, sex, familial status or handicap.

Section 6. Indemnification. In accordance with the Georgia Nonprofit Corporation Code, and to the full extent allowed by Georgia law, the Association shall indemnify every person who was or is a party or who is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association), by reason of the fact that such person is or was serving as a director or officer of the Association, against any and all expenses, including attorneys' fees, imposed upon or reasonably incurred in connection with any action, suit, or proceeding, if such person acted in a manner reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Any indemnification shall be

made by the Association only as authorized in a specific case upon a determination that indemnification of the person is proper under the circumstances.

Section 7. Implied Rights. The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it or reasonably necessary to effectuate the right or privilege.

Section 8. 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 twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

Section 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.

Section 10. Agreements. Subject to the prior approval of Declarant (until the Declarant no longer has the right to appoint and remove directors and officers of the Association pursuant to Article III, Section 2 of the Bylaws) all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

Section 11. Disclosures. Each Owner and Occupant acknowledge the following:

(i) The Community is located adjacent to thoroughfares that may be affected by traffic and noise from time to time and may be improved or widened in the future.

(ii) The views from an Owner's Lot can change over time due to among other things, additional development and the removal or addition of landscaping.

(iii) No representations are made regarding the zoning of adjacent property, or that the category to which adjacent property is zoned may not change in the future.

(iv) No representations are being made regarding which schools may now or in the future serve the Community.

(v) Since in every neighborhood, there are conditions which different people may find objectionable, it is acknowledged that there may be conditions outside of the Community that an Owner or Occupant may find objectionable and that it shall be the sole responsibility of the Owners and Occupants to become acquainted with neighborhood conditions which could affect the Lot.

(vi) All Owners and Occupants acknowledge and understand that the Declarant will be engaging in other construction activities related to the construction of the Community. Such construction activities may, from time to time, produce certain conditions in the Community, including, without limitation: (i) noise or sound that is objectionable because of its volume,

duration, frequency or shrillness; (ii) smoke; (iii) noxious, toxic, or corrosive fumes or gases; (iv) obnoxious odors; (v) dust, dirt or flying ash; (vi) unusual fire or explosion hazards; and/or (vii) temporary interruption of utilities and services; and/or (viii) other conditions that may threaten the security or safety of Persons in the Community. Notwithstanding the foregoing, all Owners and Occupants agree that such conditions in the Community resulting from construction activities shall not be deemed a nuisance and shall not cause Declarant and its agents to be deemed in violation of any provision of the Declaration.

(vii) A portion of the Community is subject to that certain Right of Way Deed in favor of Gwinnett County dated November 28, 1956, recorded at Deed Book 159, Page 273, Gwinnett County, Georgia Records.

(viii) A portion of the Community is subject to that certain Right of Way Easement in favor of Jackson Membership Corporation, filed October 19, 1988, recorded at Deed Book 5162, Page 222, aforesaid records.

(ix) A portion of the Community is subject to that certain Easement for Access, Ingress, Egress, Sewer and Utilities from RS20, Inc., to Sentinel Partners J.V., dated November 22, 1993, and recorded at Deed Book 9638, Page 62, aforesaid records.

(x) A portion of the Community is subject to that certain Easement for Transmission Line and Right of Way condemned by Georgia Power Company by Civil Action No. 98-A-7754-7, dated December 3, 1998, and recorded at Deed Book 17422, Page 65, aforesaid records.

(xi) A portion of the Community is subject to that certain Environmental Inspection Easement by Richard L. Tucker, Westbrook 23, LLC, and St. Andrews Partners, LLC, in favor of Bank of North Georgia, dated August 31, 2001, filed for record on September 7, 2001, and recorded at Deed Book 24393, Page 0116, aforesaid records.

Section 12. Preparer. This Declaration was prepared by Seth G. Weissman and Darryl R. Moss, Weissman, Nowack, Curry & Wilco, P.C., Two Midtown Plaza, 15th Floor, 1349 West Peachtree Street, Atlanta, Georgia 30309.

Section 13. 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.

Section 14. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

ARTICLE XVII

Annexation of Additional Property

Section 1. Annexation. For seven (7) years from the date this Declaration is recorded, Declarant shall be entitled to unilaterally annex a portion or all of the additional real property described in Exhibit "B" attached hereto and incorporated herein to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the Gwinnett County, Georgia, records a Supplementary

Declaration describing the property being annexed. Any such Supplementary Declaration shall require the signature of the Declarant only and shall be effective upon the filing for record of such Supplementary Declaration, unless otherwise provided in such Supplementary Declaration. After the seven (7) year period has expired, subject to the consent of the owner, upon the affirmative vote, or written consent, or any combination thereof, of Owners holding a majority of the Total Association Vote, the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the Gwinnett County, Georgia, records a Supplementary Declaration describing the property being annexed. Any such Supplementary Declaration shall be signed by the President and Secretary of the Association, and any such annexation shall be effective upon the filing for record of such Supplementary Declaration, unless otherwise provided in the Supplementary Declaration.

Section 2. Withdrawal of Property. Declarant reserves the right to amend this Declaration unilaterally at any time so long as it holds an unexpired option to expand the Community pursuant to this Article, 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 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.

Section 3. Additional Covenants and Easements. The Declarant may unilaterally subject any portion of the Community submitted to this Declaration initially or by Supplemental Declaration to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrent with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than the Declarant.

Section 4. Acquisition of Additional Common Property. Declarant may convey to the Association additional real estate, improved or unimproved, which upon conveyance or dedication to the Association shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of all its Members.

ARTICLE XVIII

Declarant's Rights

Section 1. Transfer of Declarant's Rights. Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the Bylaws may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration or in the Bylaws, as applicable. Furthermore, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the public records of Gwinnett County. Nothing in this Declaration shall be construed to require the Declarant or any successor to develop any of the property set forth in Exhibit "B" in any manner whatsoever.

Section 2. Construction and Sale Period. Notwithstanding any provisions contained in this Declaration, the Bylaws, Articles of Incorporation of the Association, use restrictions, rules and regulations, design guidelines, and any amendments thereto, so long as Declarant owns any property in the property for development and/or sale, Declarant reserves an easement across all property in the Community for 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, convenient, or

incidental to Declarant's development, construction, and sales activities related to property described on Exhibits "A" and "B" to this Declaration, including, but without limitation:

- (a) 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;
- (b) the right to tie into any portion of the Community with driveways, parking areas and walkways;
- (c) the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community;
- (d) 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;
- (e) the right to carry on sales and promotional activities in the Community;
- (f) the right to erect and maintain signs, and
- (g) the right to construct and operate business offices, construction trailers, model residences, and sales offices. Declarant may use residences, offices, or other buildings owned or leased by Declarant as model residences and sales offices.

Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense. This Section shall not be amended without the Declarant's express written consent until the Declarant's rights hereunder have terminated as hereinabove provided.

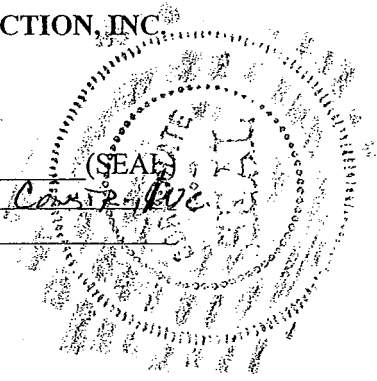
[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned, being the duly appointed officers of Declarant herein, have executed this instrument and affixed the corporate seal this 2nd day of October, 2002.

OLD PEACHTREE CONSTRUCTION, INC
a Georgia corporation

By: 

Name: Old Peachtree Construction, Inc.
Title: V.P.



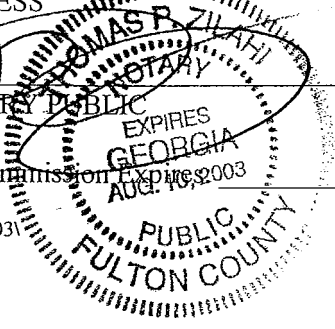
Signed, sealed, and delivered
this 2^d day of October, 2002
in the presence of:

Deborah E. Borth
WITNESS


NOTARY PUBLIC

My Commission Expires AUG. 10, 2003

1090460031



BK29080PG0050

EXHIBIT "A"

Description of Property Submitted

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 147 of the 7th Land District, Gwinnett County, Georgia, being that 5.34 acres of property shown on the plat for Montague Place prepared by Development Consultants Group, bearing the seal of Donald G. Holland, Georgia Registered Professional Land Surveyor No. 2637, dated October 2, 2001, recorded in Plat Book 91, Page 230, Gwinnett County, Georgia records.

BK 29080PG0051

EXHIBIT "B"

**Description of Additional Property that can be
Unilaterally Submitted by Declarant**

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 147 of the 7th Land District, Gwinnett County, Georgia records.

BK29080PG0052

EXHIBIT "C"

BYLAWS

OF

MONTAGUE PLACE HOMEOWNERS ASSOCIATION, INC.

WEISSMAN, NOWACK, CURRY & WILCO, P.C.
Attorneys

Two Midtown Plaza - Suite 1500
1349 West Peachtree Street
Atlanta, Georgia 30309
(404) 885-9215

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BYLAWS

OF

MONTAGUE PLACE HOMEOWNERS ASSOCIATION, INC.

Article I

General

Section 1. Applicability. These Bylaws provide for the self-government of Montague Place Homeowners Association, Inc., in accordance with the Articles of Incorporation filed with the Secretary of State and the Declaration of Covenants, Conditions and Restrictions for Montague Place, recorded in the Gwinnett County, Georgia land records ("Declaration").

Section 2. Name. The name of the corporation is Montague Place Homeowners Association, Inc. ("Association").

Section 3. Definitions. The terms used herein shall have their generally accepted meanings or such meanings as are specified in the Declaration.

Section 4. Membership. An Owner of a Lot shall automatically become a member of the Association upon taking title to the Lot and shall remain a member for the entire period of ownership. As may be more fully provided below, a spouse or cohabitant of a member may exercise the powers and privileges of the member. If title to a Lot is held by more than one (1) Person, the membership shall be shared in the same proportion as the title, but there shall be only one (1) membership and one (1) vote per Lot. Membership does not include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. Membership shall be appurtenant to the Lot and shall be transferred automatically by conveyance of that Lot and may be transferred only in connection with the transfer of title.

Section 5. Entity Members. In the event an Owner is a corporation, limited liability company, partnership, trust, or other legal entity not being a natural person or persons, then any natural person who is an officer, director, or other designated agent of such corporation, partner of such partnership, beneficiary or other designated agent of such trust, or manager of a limited liability company or representative of such other legal entity shall be eligible to represent such entity or entities in the affairs of the Association. Such person's relationship with the Association shall terminate automatically upon the termination of such person's relationship with the entity or entities which are the Owner, and termination of the person's relationship with the Association will create a vacancy in any elected or appointed position within the Association in which such person may have been serving and such vacancy will be filled in accordance with these Bylaws.

Section 6. Voting. Each Lot shall be entitled to one (1) equally weighted vote, which vote may be cast by the Owner, the Owner's spouse, the cohabitant of the Owner or by a lawful proxy as provided below. When more than one (1) Person owns a Lot, the vote for such Lot shall be exercised as they determine between or among themselves, but in no event shall more than one (1) vote be cast with respect to any Lot. If only one (1) co-owner attempts to cast the vote for a Lot, it shall be conclusively presumed that such co-owner is authorized on behalf of all co-owners to cast the vote for such Lot. In the event of disagreement between or among co-owners and an attempt by two (2) or more of them to cast such vote or votes, such Persons shall not be recognized and such vote or votes shall not be counted. No Owner shall be eligible to vote, either in person or by proxy, to act as proxy for any other member or to be elected to the Board of Directors, if that Owner is shown on the books or management accounts of the Association to be

more than thirty (30) days delinquent in any payment due the Association or if the Owner has had its voting rights suspended for the infraction of any provision of the Declaration, these Bylaws, or any rule of the Association. If the voting rights of an Owner have been suspended, that Owner shall not be counted as an eligible vote for purposes of establishing a Majority or a quorum.

Section 7. Majority. As used in these Bylaws, the term "majority" shall mean those votes, Owners, or other group as the context may indicate totaling more than fifty percent (50%) of the total number of eligible votes, Owners, or other group, respectively. Unless otherwise specifically stated, the words "majority vote" mean more than fifty percent (50%) of those voting in person or by proxy. Except as otherwise specifically provided in the Declaration or these Bylaws, all decisions shall be by majority vote.

Section 8. Purpose. The Association shall have the responsibility of administering the Community, establishing the means and methods of collecting the contributions to the Common Expenses, arranging for the management of the Community and performing all of the other acts that may be required to be performed by the Association pursuant to the Georgia Nonprofit Corporation Code and the Declaration. Except as to those matters which the Declaration or the Georgia Nonprofit Corporation Code specifically require to be performed by the vote of the Association membership, the administration of the foregoing responsibilities shall be performed by the Board of Directors as more particularly set forth below.

Article II Meetings of Members

Section 1. First Meeting and Annual Meetings. The first meeting of the Association shall be held within one (1) year from the date the Declaration is recorded. Annual meetings of the members shall be set by the Board so as to occur during the first quarter of the year, with the date, hour, and place to be set by the Board of Directors. No first meeting or annual meeting of the Association shall be set on a legal holiday.

Section 2. Special Meetings. Special meetings of the members may be called for any purpose at any time by the President, the Secretary, or by request of any two (2) or more members of the Board of Directors, or upon written petition of Owners holding a least twenty-five percent (25%) of the total eligible Association Vote. Any such written petition by the members must be submitted to the Association's Secretary. The Secretary shall then verify that the required number of members have joined in the petition and shall submit all proper petitions to the Association's President. The President shall then promptly call a special meeting for the purpose stated in the petition setting the date, time and location of the meeting (which is not required to be the date, time or location requested in any petition submitted to the Association), and the Secretary shall send notice of the meeting in accordance with these Bylaws. Any special meeting called pursuant to written petition shall be set within thirty (30) days of the date of the petition.

Section 3. Notice of Meetings. It shall be the duty of the Secretary to mail or deliver to each Owner of a Lot of record or to the Lot a notice of each annual or special meeting of the Association at least twenty-one (21) days prior to each annual meeting and at least seven (7) days prior to each special meeting. The notice of an annual meeting shall state the time and place of the meeting. The notice of a special meeting shall state the purpose of any special meeting, as well as the time and place where it is to be held. If any Owner wishes notice to be given at an address other than his or her Lot, the Owner shall have designated by notice in writing to the Secretary such other address. The mailing or delivering of a notice of meeting in the manner provided in this Section shall be considered proper service of notice.

Section 4. Waiver of Notice. Waiver of notice of meeting of the Owners shall be deemed the equivalent of proper notice. Any Owner may, in writing, waive notice of any meeting of the Owners, either

before or after such meeting. Attendance at a meeting by an Owner, whether in person or represented by proxy, shall be deemed waiver by such Owner of notice of the time, date, and place thereof unless such Owner specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted at such meeting unless objection to lack of notice is raised before the business, of which proper notice was not given, is put to a vote.

Section 5. Quorum. Except as may be provided elsewhere, the presence of Owners, in person or by proxy at the beginning of the meeting, entitled to cast one third (1/3) of the total eligible Association vote shall constitute a quorum. Once a quorum is established for a meeting, it shall conclusively be presumed to exist until the meeting is adjourned and shall not need to be reestablished. Owners whose voting rights have been suspended pursuant to the Declaration or these Bylaws shall not be counted as eligible votes toward the quorum requirement.

Section 6. Adjournment. Any meeting of the Owners may be adjourned from time to time for periods not exceeding thirty (30) days by vote of the Owners holding the Majority of the votes represented at such meeting, regardless of whether a quorum is present. Any business which could be transacted properly at the original session of the meeting may be transacted at a reconvened session, and no additional notice of such reconvened session shall be required.

Section 7. Proxy. Any member entitled to vote may do so by written proxy duly executed by the member setting forth the meeting at which the proxy is valid. To be valid, a proxy must be signed, dated, and filed with the Secretary prior to the opening of the meeting for which it is to be used. Proxies may be delivered to the Board by personal delivery, U.S. mail or telefax transmission to any Board member or the property manager. Proxies may be revoked only by written notice delivered to the Secretary of the Association, except that: (a) the presence in person by the giver of a proxy at a meeting for which the proxy is given shall automatically invalidate the proxy for that meeting; and (b) a later dated proxy shall automatically be deemed to invalidate any previously given proxy. A proxy holder may not appoint a substitute proxy holder unless expressly authorized to do so in the proxy.

Section 8. Action Without a Meeting. Any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the Association delivers a written ballot to every member entitled to vote on the matter.

(a) Ballot. A written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the 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.

All solicitations for votes by written ballot shall: (1) indicate the number of responses needed to meet the quorum requirements; (2) state the percentage of approvals necessary to approve each matter other than election of directors; and (3) specify the time by which a ballot must be received by the Board in order to be counted. A written ballot may not be revoked. The Association shall maintain such ballots in its file for at least three (3) years.

(b) Written Consent. Approval by written consent shall be valid only when the number of written consents setting forth the actions taken is received and equals or exceeds the requisite majority of the voting power required to pass such action at a meeting held on the date that the last consent is executed and

such action is consented to by the Declarant, if required. Executed written consents shall be included in the minutes or filed with the Association's records. If an action of the members is approved by written consent hereunder, the Board shall issue written notice of such approval to all members who did not sign written consents. Membership approval shall be effective ten (10) days after written notice is issued; provided, however, if the consent is to an amendment to the Declaration or Bylaws which must be recorded, the effective date shall be no earlier than the date of recording of such amendment.

Section 9. Order of Business. At all meetings of the Association, Roberts Rules of Order (latest edition) shall govern when not in conflict with the Declaration, these Bylaws or the Articles of Incorporation, unless the Owners present at a particular meeting a vote to suspend Roberts Rules at that meeting.

Article III
Board of Directors

A. Composition and Selection.

Section 1. Governing Body; Composition. The affairs of the Association shall be governed by a Board of Directors. Except as provided in Section 2 of this Article, the directors shall be members or spouses or cohabitants of such members; provided, however, no Person and his or her spouse or cohabitants may serve on the Board at the same time, and no co-owners may serve on the Board at the same time. Except for directors appointed by the Declarant, all directors must reside in the Montague Place. No persons shall be eligible to be elected to or continue to serve on the Board of Directors if they are shown on the book and records of the Association to be more than thirty (30) days delinquent in the payment of any assessment or charge by the Association. Directors shall not be eligible to serve more than three (3) consecutive two (2) year terms without first resigning from the Board for a time period which shall be the lesser of: (a) one (1) year; or (b) the period to time from the end of one (1) annual meeting of the Association to the beginning of the next annual meeting of the Association.

Section 2. Directors Appointed by Declarant. Notwithstanding anything to the contrary herein, Declarant shall have exclusive authority to appoint and remove directors and officers until the earlier of: (1) seven (7) years after the recording of the Declaration, (2) the date as of which seventy-five percent (75%) of the Lots shall have been conveyed by Declarant to Owners other than a Person constituting the Declarant unless Declarant at that time has an unexpired option to add Additional Property, or (3) the surrender in writing by Declarant of the authority to appoint and remove officers and directors of the Association. Each Owner, by acceptance of a deed to or other conveyance of a Lot, vests in Declarant this authority to appoint and remove directors and officers of the Association.

Section 3. Number of Directors. The Board shall consist of three (3) members during the period in which the Declarant has the right to appoint directors and officers as described in Section 2 of this Article and five (5) members after the expiration of this right.

Section 4. Nomination of Directors. Except with respect to directors appointed by the Declarant, nominations for election to the Board of Directors shall be made by a Nominating Committee which shall be appointed by the Board of Directors not less than thirty (30) days prior to each annual meeting to serve a term of one (1) year and shall consist of at least one (1) Board member and at least two (2) other members of the Association who are not Board members. The members of the Nominating Committee shall be announced at the annual meetings. The Nominating Committee may nominate any number of qualified individuals, but not less than the number of directors to be elected. The nominations shall be made a least

fourteen (14) days prior to the annual meeting. Nominations shall also be allowed from the floor at the meeting. Each candidate shall be given a reasonable opportunity to communicate his or her qualifications to the membership prior to the election. No member shall be nominated for election to the Board, nor permitted to run for election, if more than thirty (30) days past due in the payment of any assessment. Failure to comply with this Section shall in no way invalidate the election of directors who were not nominated in accordance with the provisions hereof.

Section 5. Election and Term of Office. Not later than thirty (30) days after termination of the Declarant's right to appoint directors and officers as described in Section 2 of this Article, the Association shall call a meeting to be held at which Owners shall elect five (5) directors. The three (3) directors receiving the most votes shall be elected for a term of two (2) years and the two (2) directors receiving the least votes shall be elected for a term of one (1) year. At the expiration of the first term of office of each member of the initial Board of Directors, a successor shall be elected to serve for a term of two (2) years. The members of the Board of Directors shall hold office until their respective successors shall have been elected by the Association.

At each annual meeting of the membership, directors shall be elected to succeed those directors whose terms are expiring. Each member shall be entitled to cast one (1) vote with respect to each vacancy to be filled from each slate on which the member is entitled to vote. There shall be no cumulative voting. The candidate(s) receiving the most votes shall be elected. Voting for election of Board members shall be by written ballot (unless dispensed by unanimous consent at such meeting at which such voting is conducted).

Section 6. Removal of Members of the Board of Directors. At any regular or special meeting of the Association duly called, any one (1) or more of the members of the Board of Directors may be removed with or without cause by a Majority of the total eligible Association vote and a successor may then and there be elected to fill the vacancy thus created. Any director whose removal has been proposed shall be given at least ten (10) days notice of the calling of the meeting to consider his or her removal and the purpose thereof and shall be given an opportunity to be heard at the meeting. For the purpose of this Section, no Owner may vote more than his or her own vote and the vote of four (4) proxies; provided, however, the Association or the board members may vote any number of proxies. Moreover, any director who has had three (3) consecutive unexcused absences from regularly scheduled Board meetings or is more than thirty (30) days past due in the payment of any assessment may be removed by the vote of a Majority of the other directors.

Section 7. Vacancies. Vacancies in the Board of Directors caused by any reason, except the removal of a director by vote of the membership, shall be filled by a vote of the Majority of the remaining directors, even though less than a quorum, at any meeting of the Board of Directors. The successor so selected shall hold office for the remainder of the term of the director being replaced.

Section 8. Compensation. Directors shall not be compensated for services as such unless and only to the extent that compensation is authorized by a Majority of the total eligible Association vote. Directors may be reimbursed for the expenses incurred in carrying out their duties as directors upon approval of such expenses by the Board of Directors. Directors also may be given nominal gifts or tokens of appreciation by the Association for recognition of services performed, not to exceed a value of One Hundred and No/100 Dollars (\$100.00) per calendar year.

Section 9. Director Conflicts of Interest. Nothing herein shall prohibit a director from entering into a contract and being compensated for services or supplies furnished to the Association in a capacity other than as director, provided that the director's interest is disclosed to the Board and the contract is approved by a

Majority of the directors who are at a meeting of the Board of Directors at which a quorum is present, excluding the director with whom the contract is made. The interested director shall not count for purposes of establishing a quorum of the Board. The interested director shall be entitled to be present at any meeting at which the proposed contract is discussed and to discuss the proposed contract, unless requested by any other director to leave the room during the discussion.

B. Meetings.

Section 1: Organization Meetings. The first meeting of the Board of Directors following each annual meeting of the Association shall be held within ten (10) days at the time and place determined by the Board.

Section 2. 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, but such meetings shall be held at least once every three (3) months.

Section 3. Special Meetings. Special meetings of the Board of Directors may be called by the President on three (3) days notice to each director given by regular first class or electronic mail, in person, by telephone, by facsimile transmission, which notice shall state the time, place, and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President, Vice President, Secretary, or Treasurer in like manner and on like notice on the written request of at least two (2) directors.

Section 4. Waiver of Notice. The transactions of 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. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed to have been given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

Section 5. 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. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a Majority of the required quorum for that meeting. If any meeting cannot be held because a quorum is not present, a Majority of the directors who are present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time that 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.

Section 6. 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. Notwithstanding the above, 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.

Section 7. Action Without a Meeting. Any action by the Board of Directors required or permitted to be taken at any meeting may be taken without a meeting if a Majority of the directors consent to such action in writing, sent via hand delivery, facsimile, regular first class or electronic mail. Such written consents must describe the action taken and be signed by no fewer than a Majority of the directors and such written consent or consents shall be filed with the minutes of the Board of Directors.

Section 8. Telephonic Participation. One or more directors may participate in and vote during any regular or special meeting of the Board by telephone conference call or similar communication equipment by means of which all persons participating in the meeting can hear each other at the same time, and those directors participating by telephone shall be deemed to be present at such meeting for quorum and other purposes. Any such meeting at which a quorum participates shall constitute a regular meeting of the Board.

C. Powers and Duties.

Section 1. Powers and Duties. The Board of Directors shall manage the affairs of the Association and shall have all the powers and duties necessary for the administration of the Community and may do all such acts and things as are not by the Declaration, the Articles of Incorporation, or these Bylaws directed to be done and exercised exclusively 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 shall be responsible for the following, in way of explanation, but not limitation:

- (a) preparing and adopting of an annual budget, in which there shall be established the contribution of each Owner to the Common Expenses;
- (b) making assessments to defray the Common Expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment;
- (c) providing for the operation, care, upkeep, and maintenance of all of the areas which are the maintenance responsibility of the Association;
- (d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and the maintenance, repair, and replacement of the Common Property, Association property 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 financial depository or institution which it shall approve, or otherwise investing the proceeds in accordance with any limitations set forth in O.C.G.A. § 14-3-302, and using the proceeds to administer the Association;
- (f) making and amending rules and regulations and imposing sanctions for violation thereof, including, without limitation, reasonable monetary fines;
- (g) opening of bank or other financial accounts on behalf of the Association and designating the signatories required;

(h) making or contracting for the making of repairs, additions, and improvements to, or alterations of the Common Property in accordance with the other provisions of the Declaration and these Bylaws, after damage or destruction by fire or other casualty;

(i) 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 Owners concerning the Association;

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

(k) paying the costs of all services rendered to the Association or its members and not directly chargeable to specific Owners;

(l) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred; and

(m) contracting with any Person for the performance of various duties and functions. The Board shall have the power to enter into common management agreements with trusts, condominiums or other associations or corporations. Any and all functions of the Association shall be fully transferable by the Board, in whole or in part, to any other entity.

Section 2. Management Agent. The Association may, but shall not be required to, hire a professional management agent or agents, at a compensation established by the Board, 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 Board shall use reasonable efforts in any management contract to provide for termination of such contract with or without cause and without penalty, upon no more than thirty (30) days written notice, and for a term not in excess of one (1) year.

Section 3. Borrowing. The Board of Directors shall have the power to borrow money for the purpose of maintenance, repair, restoration or improvement of the Common Property and facilities without the approval of the members of the Association; the Board shall also be authorized to borrow money for other purposes; provided, however, the Board shall obtain membership approval in the same manner as provided for special assessments if the proposed borrowing is for the purpose of modifying, improving, or adding amenities to the Community or the total amount of such borrowing exceeds or would exceed ten thousand (\$10,000.00) dollars outstanding debt at any one time.

Section 4. Liability and Indemnification of Officers, Directors and Committee Members. The Association shall indemnify every officer, director, and committee member (including directors, officers, and committee members appointed by Declarant during the period of Declarant control) against any and all expenses, including attorney's fees, reasonably incurred by or imposed upon such officer, director or committee member in connection with any action, suit, or other proceeding (including settlement of any such action, suit, or proceeding, if approved by the then Board of Directors) to which he or she may be made a party by reason of being or having been an officer, director or committee member, whether or not such person is an officer, director or committee member at the time such expenses are incurred subject to the limitation below. The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, or for injury or damage caused by any such officer, director or committee member in the performance of his or her duties, except for his or her own individual willful misfeasance or

malfeasance. The Association, in determining whether or not to indemnify a director, officer or committee member, shall not impute knowledge to said director, officer or committee member from any source whatsoever; rather, any such determination shall be based on the actual knowledge of the director, officer or committee member. 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 (except to the extent that such officers, directors or committee members may also be members of the Association), and the Association shall indemnify and forever hold each such officer, director or 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 or director, may be entitled. The Association shall maintain, as a Common Expense, adequate general liability and, if obtainable, officers' and directors' liability insurance to fund this obligation, and the insurance shall be written as provided in the Declaration.

D. Committees.

Section 1. Nominating Committee. Pursuant to Article III. A, Section 4 hereof, there shall be a Nominating Committee composed of at least three (3) members appointed in the manner and to perform the functions specified in Article III.A, Section 4.

Section 2. Architectural Control Committee. The Board shall establish an Architectural Control Committee for the purpose of establishing and maintaining architectural standards in the Community as provided in the Declaration.

Section 3. Landscaping Committee. The Board may establish a Landscaping Committee for the purpose of, among other things, providing standards and suggestions for annual plantings at the Community, creating a community vegetable garden or organizing a gardening club at the Community.

Section 4. Activities Committee. The Board may establish an Activities Committee for the purpose of, among other things, creating a web site or web page on the Internet for the Association, or for arranging a babysitting co-op, a book club, or other types of groups with common interests at the Community.

Section 5. Other Committees. There shall be such other committees as the Board shall determine with the powers and duties that the Board shall authorize.

Section 6. Service on Committees. Unless otherwise provided in these Bylaws or in the resolution authorizing a particular committee, the members of any committee shall be appointed by the President and shall serve at the pleasure of the Board of Directors. Any committee member may be removed with or without cause at any time and with or without a successor being named.

Article IV
Officers

Section 1. Designation. The principal officers of the Association shall be the President, the Vice President, the Secretary and the Treasurer. The President, Vice President and Secretary shall be elected by and from the Board of Directors. The Treasurer shall be elected by the Board of Directors, but need not be a Board member. Except for the offices of Secretary and Treasurer, which may be held by the same person, no person may hold more than one (1) office.

Section 2. Election of Officers. Except during the period in which the Declarant has the right to appoint the officers of the Association under Article III, Section 2 of these Bylaws, the officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board following each annual meeting of the members and shall hold office at the pleasure of the Board of Directors and until a successor is elected.

Section 3. Removal of Officers. Upon the affirmative vote of a Majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and a successor may be elected.

Section 4. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. 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.

Section 5. Vacancies. 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.

Section 6. President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the members and of the Board of Directors. The President shall have all the general powers and duties which are incident to the office of the president of a corporation organized under the Georgia Nonprofit Corporation Code, including, but not limited to, the power to appoint committees from among the members from time to time as he or she may in his or her discretion decide is appropriate to assist in the conduct of the affairs of the Association.

Section 7. Vice President. The Vice President shall act in the President's absence and shall have all powers, duties, and responsibilities provided for the President when so acting.

Section 8. Secretary. The Secretary shall keep the minutes of all meetings of the members and of the Board of Directors and shall have charge of such books and papers as the Board of Directors may direct, and shall, in general, perform all duties incident to the office of the secretary of a corporation organized under Georgia law.

Section 9. Treasurer. The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, for preparing all required financial statements and tax returns, and for the deposit of all monies and other valuable effects in the name of the Association or the managing agent in such depositories as may from time to time be designated by the Board of Directors. The Treasurer shall be responsible for the preparation of the budget as provided in the Declaration. The Treasurer may delegate all or a part of the preparation and notification duties associated with the above responsibilities to a management agent.

Section 10. Other Officers. Other offices may be created by the Board, and the Board members which hold such offices shall have such titles and duties as are defined by the Board.

Section 11. Agreements, Contracts, Deeds, Leases, Etc. All agreements, contracts, deeds, leases, checks, promissory notes, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by resolution of the Board of Directors.

Article V
Rule Making and Enforcement

Section 1. Authority and Enforcement. The Community shall be used only for those uses and purposes set out in the Declaration. The Board of Directors shall have the authority to make, modify, repeal and enforce reasonable rules and regulations governing the conduct, use, and enjoyment of Lots and the Common Property; provided, copies of all such rules and regulations shall be furnished to all Owners and Occupants. Any rule or regulation may be repealed by the affirmative vote or written consent of a Majority of the total eligible Association vote at an annual or special meeting of the membership. Every Owner and Occupant shall comply with the Declaration, Bylaws and rules and regulations of the Association, and any lack of compliance therewith shall entitle the Association and, in an appropriate case, one (1) or more aggrieved Unit Owners, to take action to enforce the terms of the Declaration, Bylaws or rules and regulations.

The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the Owner's Lot, and to suspend an Owner's right to vote or to use the Common Property for violation of any duty imposed under the Declaration, these Bylaws, or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Association or the Board of Directors to limit ingress and egress to or from a Lot. The Board of Directors also shall have the right to suspend any utility services, the cost of which are a Common Expense of the Association, so long as the Board of Directors complies with any and all requirements and notices set forth in the Declaration. In the event that any Occupant of a Lot violates the Declaration, Bylaws, or a rule or regulation and a fine is imposed, notice of such violation shall be sent to the Owner and the Occupant, and the fine shall first be assessed against such Occupant; provided, however, if the fine is not paid by the Occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Association, and the fine shall be an assessment and a lien against the Lot until paid. The failure of the Board to enforce any provision of the Declaration, Bylaws, or any rule or regulation shall not be deemed a waiver of the right of the Board to do so thereafter.

Section 2. Fining and Suspension Procedure. The Board shall not impose a fine or suspend the right to vote or to use the Common Property (unless an Owner is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association in which case such suspensions shall be automatic; provided further, however, suspension of common utility services shall require compliance with the provisions of the Declaration, where applicable) unless and until notice of the violation is given as provided in subsection 2(a) below. Any such fine or fines may be effective or commence upon the sending of such notice or such later date as may be set forth in such notice, notwithstanding the violator's right to request a hearing before the Board to challenge such fine under subsection 2(b) below.

(a) Notice. If any provision of the Declaration or Bylaws or any rule or regulation of the Association is violated, the Board shall serve the violator with written notice sent certified mail, return receipt requested, which shall state: (i) the nature of the alleged violation; (ii) the proposed sanction to be imposed; (iii) a statement that the violator may challenge the fact of the occurrence of a violation, the proposed sanction, or both, by written challenge and written request for a hearing before the Board, which request must be received by the Board within ten (10) days of the date of the notice; (iv) the name, address, and telephone number of a person to contact to challenge the proposed action. If a timely challenge is made and the violation is cured within ten (10) days of the date of the notice, the Board, in its discretion, may, but is not obligated to, waive any sanction or portion thereof. In the event of a continuing violation, each day the

violation continues or occurs again constitutes a separate offense, and fines may be imposed on a per diem basis without further notice to the violator.

(b) Hearing. If the alleged violator timely challenges the proposed action, a hearing before the Board of Directors shall be held in executive session affording the violator a reasonable opportunity to be heard. The hearing shall be set at a reasonable time and date by the Board, and notice of the time, date (which shall be not less than ten (10) days from the giving of notice without the consent of the violator), and place of the hearing and an invitation to attend the hearing and produce any statements, evidence, and witnesses shall be sent to the alleged violator. Proof of such notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer or director who delivered such notice. The notice requirement shall be deemed satisfied if the violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. This Section shall be deemed complied with if a hearing is held and the violator attends and is provided an opportunity to be heard, notwithstanding the fact that the notice requirements contained herein are not technically followed.

Section 3. Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Association, acting through its Board of Directors, may elect to enforce any provision of the Declaration, the Bylaws, or the rules and regulations by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity for compliance with the procedure set forth in Section (2) of this Article. In any such action, to the maximum extent permissible, the Owner or Occupant responsible for the violation for which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

The Association or its duly authorized agent shall have the power to enter a Lot or upon any portion of the Common Property to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates the Declaration, the Bylaws, or the rules and regulations; provided, however, written notice shall be given to the Owner of the Unit at least two (2) days prior to the time that any items of construction are altered or demolished. All costs of self-help, including reasonable attorney's fees, shall be assessed against the violating Owner and shall be collected as provided herein for the collection of assessments.

Article VI
Miscellaneous

Section 1. Notices. Unless otherwise provided in these Bylaws, all notices, demands, bills, statements, or other communications under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

(a) If to an Owner, at the address which the Owner has designated in writing and filed with the Secretary, or if no such address has been designated, at the address of the Lot of such Owner;

(b) If to an Occupant, at the address of the Lot occupied; or

(c) If to the Association, the Board of Directors or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated in writing and filed with the Secretary.

Section 2. Severability. The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these Bylaws or the Declaration.

Section 3. Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of these Bylaws or the intent of any provision thereof.

Section 4. Gender and Grammar. The use of the masculine gender in these Bylaws shall be deemed to include the feminine gender, and the use of the singular shall be deemed to include the plural whenever the context so requires.

Section 5. Fiscal Year. The fiscal year of the Association may be set by resolution of the Board of Directors. In the absence of such resolution by the Board of Directors, the fiscal year shall be the calendar year.

Section 6. Financial Review. A financial review of the accounts of the Association shall be performed annually in the manner provided by the Board. However, after having received the Board's financial review at the annual meeting, the Owners may, by a majority of the total eligible Association vote, require that the accounts of the Association be audited as a Common Expense by an independent accountant.

Section 7. Conflicts. The duties and powers of the Association shall be those set forth in the Georgia Nonprofit Corporation Code, the Declaration, these Bylaws, and the Articles of Incorporation, together with those reasonably implied to affect the purposes of the Association; provided, however, that if there are conflicts or inconsistencies between the Georgia Nonprofit Corporation Code, the Declaration, these Bylaws, or the Articles of Incorporation, then the provisions of the Georgia Nonprofit Corporation Code, as may be applicable, the Declaration, the Articles of Incorporation and these Bylaws, in that order, shall prevail, and each Owner of a Lot, by acceptance of a deed or other conveyance therefor, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies.

Section 8. Amendment. These Bylaws may be amended unilaterally at any time and from time to time by Declarant (a) if an amendment is necessary to bring any provision into compliance with any applicable governmental statute, rule, or regulation or judicial determination with which it is in conflict; (b) if an amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to the Declaration; (c) if an amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable the lender or purchaser to make or purchase Mortgage loans on the Lots subject to the Declaration; or (d) if an amendment is necessary to enable any governmental agency or reputable private insurance company to insure or guarantee Mortgage loans on the Lots subject to the Declaration. However, any such amendment shall not adversely affect the title to any Owner's Lot unless such Owner consents to the amendment in writing. Further, until one hundred percent (100%) of the Community has been developed and conveyed to Owners in the normal course of development and sale, Declarant may unilaterally amend these Bylaws for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owner, nor shall it adversely affect title to any Lot without the consent of the affected Owner.

In addition to the above, these Bylaws may be amended upon the affirmative vote or written consent, or any combination of affirmative vote and written consent, of Owners holding at least two-thirds (2/3) of the eligible vote of the Association, plus the consent of the Declarant (until one hundred percent (100%) of the

Community has been developed and conveyed to Owners in the normal course of development and sale). Amendments to these Bylaws shall become effective upon recordation, unless a later effective date is specified in the amendment. No provision of these Bylaws which reserves or grants special rights to the Declarant shall be amended without the Declarant's prior written consent so long as the Declarant owns any property in the Montague Place, primarily for development and/or sale.

Notwithstanding the above, VA and HUD shall have the right to veto amendments to these Bylaws for as long as the Declarant has the right to appoint directors and officers of the Association under Article III, Section 2 of these Bylaws.

Any action to challenge the validity of an amendment adopted under this Section must be brought within one (1) year of the amendment's effective date. No action to challenge any such amendment may be brought after such time.

Section 9. Books and Records.

(a) All members of the Association and any institutional holder of a first Mortgage shall be entitled to inspect the following records at a reasonable time and location specified by the Association, upon written request at least five (5) days before the date on which the member wishes to inspect and copy:

(i) its Articles or restated Articles of Incorporation and all amendments to them currently in effect;

(ii) its Bylaws or restated Bylaws and all amendments to them currently in effect;

(iii) resolutions adopted by either its members or Board of Directors increasing or decreasing the number of directors or the classification of directors, or relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;

(iv) resolutions adopted by either its members or Board of Directors relating to the characteristics, qualification, rights, limitations, and obligations of members or any class or category of members;

(v) the minutes of all meetings of members and records of all actions approved by the members for the past three (3) years;

(vi) all written communications to members generally within the past three (3) years, including the financial statements furnished for the past three (3) years;

(vii) a list of the names and business or home addresses of its current directors and officers; and

(viii) its most recent annual report delivered to the Secretary of State.

(b) A member may inspect and copy the following records upon written notice at least five (5) business days before the date on which the member wishes to inspect and copy only if the member's demand is made in good faith and for a proper purpose that is reasonably relevant to the member's legitimate interest as a member; the member describes with reasonable particularity the purpose and the records the

member desires to inspect; the records are directly connected with this purpose; and the records are to be used only for the stated purpose:

(i) excerpts from minutes of any Board meeting, records of any action of a committee of the Board while acting in place of the Board on behalf of the Association, minutes of any meeting of the members, and records of action taken by the members or the Board without a meeting, to the extent not subject to inspection under subsection 9(a);

(ii) accounting records of the Association; and

(iii) the membership list only if for a purpose related to the member's interest as a member. Without the consent of the Board, a membership list or any part thereof may not be: used to solicit money or property unless such money or property will be used solely to solicit the votes of the members in an election to be held by the Association; used for any commercial purpose; or sold to or purchased by any person.

The Association may impose a reasonable charge, covering the cost of labor and material, for copies of any documents provided to the Member.

Notwithstanding anything to the contrary, the Board may limit or preclude member inspection of confidential or privileged documents, including attorney/client privileged communications, executive session meeting minutes, and financial records or account of other members. Minutes for any Board or Association meetings do not become effective and an official Association record until approved by the Board or Association membership, as applicable, at a subsequent meeting.

FILED & RECORDED
CLERK SUPERIOR COURT
GWINNETT COUNTY, GA.

02 OCT -7 PM 1:07

TOM LAWLER, CLERK

Return To: Weissman, Nowack, Curry & Wilco, P.C.
Two Midtown Plaza, 15th Floor
1349 West Peachtree Street
Atlanta, Georgia 30309
Attention: Darryl R. Moss, Esq.

Cross Reference: Deed Book 25051
Page 47

**TRANSFER, ASSIGNMENT AND ASSUMPTION OF DECLARANT
RIGHTS AND DUTIES FOR MONTAGUE PLACE**

WHEREAS, St. Andrews Partners, LLC, a Georgia limited liability company ("St. Andrews") executed that certain Declaration of Covenants, Restrictions and Easements for Montague Place which was recorded on November 6, 2001 in Deed Book 25051, Page 47, *et seq.* of the Gwinnett County, Georgia records ("Declaration"); and

WHEREAS, the Declaration provides that St. Andrews is the "Declarant" for Montague Place; and

WHEREAS, St. Andrews conveyed all that certain property subject to the Declaration to Old Peachtree Construction, Inc., a Georgia corporation ("Old Peachtree") by that certain Warranty Deed recorded in Deed Book 26610, Page 0126, of the Gwinnett County, Georgia.

NOW, THEREFORE, in consideration of the foregoing and the agreements set forth, the sum of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged: (a) St. Andrews hereby conveys, transfers, and assigns to Old Peachtree all its right, title, and interest as "Declarant" under the Declaration; and (b) by its execution hereof, Old Peachtree hereby accepts such conveyance, and hereby contemporaneously assumes all the duties and obligations of the Declarant under the said Declaration.

IN WITNESS WHEREOF, the undersigned, have executed this Transfer, Assignment and Assumption of Declarant Rights and Duties for Montague Place under seal as of the 15th day of October, 2002.

[SIGNATURES CONTINUED ON NEXT PAGE]

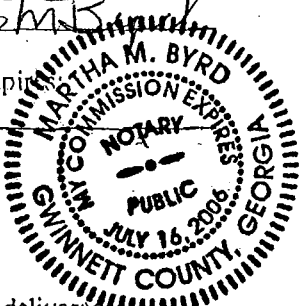
BK 29080PG0002

ST. ANDREWS PARTNERS, LLC,
a Georgia limited liability company

Signed, sealed, and delivered
this 1st day of Oct, 2002
in the presence of:

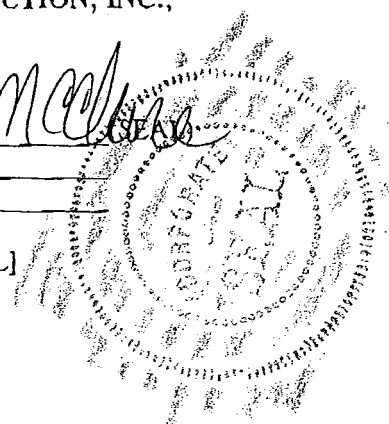
[Signature]
Witness

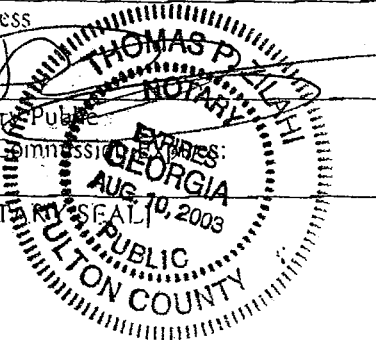
By: [Signature] (SEAL)
Name: Wayne H. Mason
Title: Manager

[Signature]
Notary Public
My Commission Expires
[NOTARY SEAL]


OLD PEACHTREE CONSTRUCTION, INC.,
a Georgia corporation

Signed, sealed, and delivered
this 3rd day of October, 2002
in the presence of:

By: [Signature] (SEAL)
Name: _____
Title: _____
[CORPORATE SEAL]


[Signature]
Witness
[Signature]
Notary Public
My Commission Expires:
[NOTARY SEAL]


BK29080PG0003

FILED & RECORDED
CLERK SUPERIOR COURT
GWINNETT COUNTY, GA.

02 OCT -7 PM 1:07

TOM LAWLER, CLERK

-----[SPACE ABOVE RESERVED FOR RECORDING DATA]-----

Return to: Weissman, Nowack, Curry & Wilco, P.C.
1349 West Peachtree Street, 15th Floor
Atlanta, Georgia 30309
Attention: Darryl R. Moss, Esq.

STATE OF GEORGIA
COUNTY OF GWINNETT

Reference: Deed Book 25051
Page 47

**AMENDED AND RESTATED DECLARATION OF COVENANTS,
RESTRICTIONS AND EASEMENTS
FOR MONTAGUE PLACE**

WHEREAS, St. Andrews Partners, LLC, a Georgia limited liability company, recorded a Declaration of Covenants, Restrictions and Easements for Montague Place, in Deed Book 25051, Page 47, et seq., Gwinnett County, Georgia Records (hereinafter referred to as the "Original Declaration"); and

WHEREAS, a plat entitled "Final Plat for Montague Place" dated October 2, 2001, was filed in Plat Book 91, Page 230, Gwinnett County, Georgia Records; and

WHEREAS, Declarant is the sole Owner of every Lot in the Community; and

WHEREAS, Article IX, Section 9.02 of the Original Declaration provides for unilateral amendment of the Original Declaration by the Declarant; and

WHEREAS, in accordance with Article VII, Section 7.9 of the Bylaws of Montague Place Homeowners Association, Inc. ("Original By-Laws"), the Original By-Laws may be amended by the Declarant; and

WHEREAS, Declarant and the Board of Directors have approved this amendment to the Original Declaration and the Original By-Laws at a meeting of the Association duly called for such purpose; and

NOW, THEREFORE, the Original By-Laws and the Original Declaration and all exhibits thereto are hereby stricken in their entirety and the following is simultaneously substituted therefore:

BK 29080PG0070

FILED & RECORDED
CLERK SUPERIOR COURT
GWINNETT COUNTY, GA.

02 OCT -7 PM 1:07

TOM LAWLER, CLERK

Return to: Darryl R. Moss, Esq.
Weissman, Nowack, Curry & Wilco, P.C.
1349 West Peachtree Street, 15th Floor
Atlanta, Georgia 30309

Cross-reference to Deed Book 20010
Deed to Secure Debt: Page 127

MORTGAGEE CONSENT, APPROVAL AND SUBORDINATION

Bank of North Georgia ("Mortgagee"), being the owner and holder of a Deed to Secure Debt and Security Agreement recorded in Deed Book 20010 Page 127, Gwinnett County, Georgia records (the "Security Instrument") approves that certain Declaration of Covenants, Conditions, Restrictions, and Easements for Montague Place (the "Declaration") which is to be recorded with this Consent; and

FURTHERMORE, Mortgagee does hereby expressly subordinate to the Declaration all right, title, interest and lien of the undersigned created under and by virtue of the Security Instrument with respect to the property described in and subject to the Declaration or hereafter made subject to the Declaration in accordance with the terms thereof. Except as set forth herein, the Security Instrument shall otherwise remain in full force and effect and shall not be subordinated to any other lien or encumbrance.

IN WITNESS WHEREOF, the undersigned has executed this Mortgagee Consent, Approval and Subordination this 11th day of September, 2002.

MORTGAGEE:

By: [Signature]
Title: VP Construction Lending

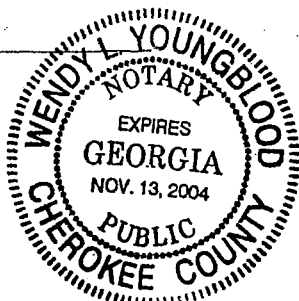
[CORPORATE SEAL]



Signed, sealed, and delivered
this 11th day of September, 2002.

[Signature]
Witness

[Signature]
Notary Public
My Commission Expires:
[NOTARY SEAL]



249527-1
09046-003

178550