

**DECLARATION OF COVENANTS, RESTRICTIONS, AND EASEMENTS
FOR MAGNOLIA CREEK OF FORSYTH SUBDIVISION**

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

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**DECLARATION OF COVENANTS, RESTRICTIONS, AND EASEMENTS
FOR MAGNOLIA CREEK OF FORSYTH SUBDIVISION**

THIS DECLARATION OF COVENANTS, RESTRICTIONS, AND EASEMENTS FOR MAGNOLIA CREEK OF FORSYTH SUBDIVISION (hereinafter referred to as the "Declaration") is made as of the 24 day of March, 2004, by CALLAS DEVELOPMENT COMPANY, INC., a Georgia Corporation, (hereinafter referred to as "Declarant").

BACKGROUND STATEMENT

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

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

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

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

**ARTICLE I
DEFINITIONS**

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

1.01 Articles of Incorporation or Articles: The Articles of Incorporation for Magnolia Creek of Forsyth Subdivision, as filed with the Secretary of State of Georgia.

1.01 Association: "Association" means MAGNOLIA CREEK OF FORSYTH HOMEOWNERS ASSOCIATION, a nonprofit, membership corporation organized under the Georgia Nonprofit Corporation Code, its successors and assigns.

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

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

1.04 Common Expenses: The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Lot Owners, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the Bylaws, and the Articles of Incorporation of the Association.

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

1.06 Community: The real property and interest described on Exhibit "A" and such additions to that property as are made by Declarant or by the Association pursuant to this Declaration.

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

1.08 Declaration: This Declaration of Covenants, Restrictions, and Easements for Magnolia Creek of Forsyth Subdivision, as it may be amended and supplemented from time to time.

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

1.10 Lot: "Lot" means any parcel of land shown upon a Subdivision plat recorded in the Office of the Clerk of the Superior Court of Forsyth County, covering any portion of the Property, as such boundaries may be modified in accordance with Section 7.03, provided, however, that no portion of the Common Property shall ever be a lot except as provided in Section 3.05.

1.11 Member: "Member" means any member of the Association.

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

1.13 Occupant: "Occupant" means any person occupying all or any portion of a Residence located within the Development for any period of time, regardless of whether such person is a tenant or the Owner of such property.

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

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

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

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

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

1.19 Structure: "Structure" means:

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

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

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

1.20 Supplementary Declarations: "Supplementary Declarations" means an amendment or supplement to this Declaration which subjects additional property to the Declaration, imposes additional property to the Declaration, imposes additional restrictions and allegations on the land described therein, or both.

ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION

2.01 Property Subjected to this Declaration. The real property which is subject to the

covenants, conditions and restrictions contained in this Declaration is the real property described in Exhibit "A" attached hereto and made part of this Declaration.

2.02 Other Property.

(a) Unilateral Annexation By Declarant. As the Owner thereof or, if not the Owner, with the consent of the Owner thereof, Declarant shall have the unilateral right, privilege, and option from time to time at any time until twenty (20) years after the recording of this Declaration to subject all or any portion of the real property described in Exhibit "B" attached hereto and by this reference incorporated herein, to the provisions of this Declaration and the jurisdiction of the Association by filing for Record in the county in which the property to be annexed is located a Supplementary Declaration describing the property being subjected. A supplementary Declaration Recorded pursuant to this section shall not require the consent of any person, except the Owner of such property other than Declarant. Declarant may annex hereto the property described in Exhibit "B;" however, inclusion of property in Exhibit "B" shall not obligate the Declarant to subject such property to the Declaration. Any annexation shall be effective upon the filing for record of a Supplementary Declaration unless a later effective date is provided therein. As long as covenants applicable to the real property previously subjected to this Declaration are not changed and as long as rights of existing Owners are not adversely affected, the Declarant may unilaterally amend this Declaration to reflect the different character of any such annexed real property. If any land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent Owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

(b) Other Annexation. Upon the written consent of: (a) the Owner(s) thereof; (b) the Declarant; and (c) the Owners of at least two-thirds of the Lots, the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association by filing a Supplementary Declaration describing the property being annexed for record in Forsyth County, Georgia. Any such Supplementary Declaration shall be executed on behalf of the Association by the President of the Association, whose signature shall be attested by the Secretary of the Association. The annexation shall be effective only upon filing for Record of such Supplementary Declaration, unless a later effective date is provided therein.

**ARTICLE III
COMMON PROPERTY**

3.01 Conveyance of Common Property:

(a) Declarant may convey to the Association any personal property, any improved or unimproved real property, leasehold, easement, or other property interest located within or

adjacent to the Community. The Association shall accept such conveyance, and the property shall thereafter be Common Property to be maintained by the Association as a Common Expense for the benefit of all Owners. Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section.

3.02 Maintenance of Area of Common Property: The Association shall maintain, in accordance with the Development-Wide Standard, the Common Property, including (without limitation):

(a) the Common Property, which may include, without limitation, all entry features, fences, walls, and roadways located within the Community, Common Property parking areas, if any, improvements, and/or open spaces, or landscape strip/buffer areas, the operation and maintenance of street lights (if not maintained and operated by a governmental entity) for the Community, and the expenses for water and electricity, if any, provided to all such entry features;

(b) all ponds, dams, spillways, and overflow pipes, if any, on or about the Community, to the extent maintenance is required and same are not otherwise maintained by a governmental entity or third party; and

(c) all storm water detention basins, facilities and easements serving the Community (to the extent such facilities and easements are not maintained by a governmental entity); and all property outside of Lots located within the Community which was originally maintained by Declarant.

The Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether within or without the Community, where the Board has determined that such maintenance would benefit the Owners.

All costs associated with such maintenance shall be a Common Expense of the Association. In the event that the Association determines that the need for maintenance, repair, or replacement of property described in (a) or (b) above is caused through the willful or negligent act of an Owner, or the family, guests, lessees, or invitees of any Owner, and is not covered or paid for by insurance, in whole or in part, then the Association may perform such maintenance, repair or replacement at such Owner's sole cost and expense, and all costs thereof shall be a specific assessment against such Owner subject to the Association's lien and collection rights provided for in this Declaration.

The Association shall not be liable for any damage or injury occurring on or arising out of the condition of property that it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

3.03 Owner's Responsibility: Except as provided in Section 3.01, each Owner shall maintain his or her Lot, including the Residence, and all other improvements on his or her Lot in

a manner consistent with the Development-Wide Standard and this Declaration. In the event that the Board determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair, or replacement of items for which such Owner is responsible, the Association may perform such maintenance, repair, or replacement for the Owner at the Owner's expense. Except in an emergency situation, the Association shall give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair, or replacement, or, in the event that such maintenance, repair, or replacement is not capable of completion within a ten (10) day period, to work diligently to complete such work within a reasonable time. If any Owner does not comply with this Section, the Association may provide any such maintenance, repair, or replacement at such Owner's sole cost and expense, and all costs shall be assessed against the Owner as a specific assessment.

3.04 Right of Enjoyment: Every Owner of a Residence shall have a right and easement to use and enjoy the Common Property, which right shall be appurtenant to and shall pass with the title to every Lot upon transfer; provided, however, that no Owner shall do any act which interferes with the free use and enjoyment of the Common Property by all other Owners. The Association may permit persons who are not Owners of Residences to use and enjoy part or all of the Common Property subject to such limitations, and upon such terms and conditions, as it may from time to time establish. The right and easement of enjoyment granted or permitted by this Section 3.04 is subject to suspension by the Association as provided herein. Provided that rights to use the Common Property arising from non-voting membership rights shall not be altered, amended or otherwise abridged until such rights are voluntarily relinquished by such non-voting member, except for suspension as provided herein.

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

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

ARTICLE IV
MAGNOLIA CREEK OF FORSYTH HOMEOWNERS ASSOCIATION, INC.

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

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

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

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

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

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

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

(f) Suspend, pursuant to Section 4.04, the voting rights of any Member and the right of enjoyment granted or permitted by Section 3.04;

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

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

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

4.03 Membership in the Association: Every Owner shall automatically be a Member of the Association and such membership, shall terminate only as provided in this Declaration of Covenants, Restrictions, and Easements. For purposes of voting, there shall be two (2) classes of Members as set forth in Section 4.04. There shall also be a non-voting class of membership as set out in Paragraph 4.09.

4.04 Voting Rights:

(a) Each Owner of a Lot, with the exception of Declarant, shall be a Class A Member and shall be entitled to one (1) Class A vote per Lot owned by such Owner. Every Owner shall be a Member of the Association, provided that there shall be only one membership per Lot. If a Lot is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The votes and rights of use and enjoyment shall be as provided in this Declaration and in the Bylaws. Membership shall be appurtenant to 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 an Owner or the Owner's spouse, but in no event shall more than one vote be cast nor office held for each Lot owned. Members shall be entitled to one vote for each Lot owned, provided that there shall be only one vote per Lot. When more than one Person holds an ownership interest in any Lot, the vote for such Lot shall be exercised as the Owners themselves determine and instruct the Secretary prior to any meeting. The Lot's vote shall be suspended in the event more than one Person seeks to exercise it.

(b) The Declarant shall be the sole Class B Member and shall be entitled to three (3) votes for each Lot owned; provided, however, in no event shall the Class B Member have less than the total number of Class A votes plus one (1). The Class B Membership shall cease and be converted to a Class A Membership at such time as Declarant no longer retains the right to appoint and remove members of the Board and officers of the Association pursuant to Section 4.08 below.

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

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

(a) Shall be subject to the Right of Abatement, as defined in Section 9.02, by reason of having failed to take the reasonable steps to remedy a violation or breach of either the Restrictions or the Design Standards of the ACC (as herein defined) within thirty (30) days after having received notice of the same pursuant to the provisions hereof;

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

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

Such suspension shall be for the balance of the period in which said Member or person shall remain in violation, breach or default, as aforesaid, except that in the case of a violation described in Subsection (c) of this Section 4.06, the suspension may be for a period not to exceed sixty (60) days after the cure or termination of such violation. No such suspension shall prevent an Owner's ingress to or egress from his Lot.

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

4.08 Voting Procedures: The procedures for the election of Directors of the Association and the resolution of such other issues as may be brought before the Membership of the Association shall be governed by this Declaration, the Georgia Non-Profit Corporation Code, the Articles of Incorporation of the Association, and the By-Laws of the Association, a copy of which is attached hereto as Exhibit "C", as each shall, from time to time, be in force and effect.

4.09 Non-voting Membership: Notwithstanding any of the foregoing, so long as Declarant is the owner of any Lot in the Subdivision, Declarant may establish as many non-voting memberships as Declarant deems reasonable for the purpose of permitting the use and

access by such non-voting members to the common areas designated for swim, tennis and other recreational purposes. Such non-voting memberships shall be established and maintained as follows:

(a) Declarant or the Board of the Association may sell a non-voting membership to a non-lot owner, the proceeds of which shall be paid to the Association. The initial purchase price for such membership rights shall be equal to the annual assessment set out in Paragraph 5.04, plus a prorated portion of said assessment which would be due for the balance of the calendar year in which said membership is purchased.

(b) Thereafter, non-voting members shall pay an annual assessment as set out in Paragraphs 5.04 and 5.05. For all purposes except voting, such non-voting members shall have all rights, responsibilities and duties of a voting member and shall be subject to all the provisions, covenants and assessments set out in this Declaration, except as set forth to the contrary. Notwithstanding the foregoing, inasmuch as the Association shall have no lien rights against lots of non-voting members, the membership of such non-voting members may be terminated upon default, failure to pay, or breach of the rules set forth for the use of the Common areas. Upon such default, the Association will give such non-voting member thirty (30) days' notice and right to cure. Upon failure of such non-voting member to cure any breach or default of the financial obligations and rules set forth for the use of said Common areas, the Association may terminate such non-voting member's membership. After termination, any such non-voting member may reinstate such membership by paying an additional Membership Fee equal to one-year's assessment in addition to curing the default or breach which was cause for termination.

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

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

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

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

(g) The creation of non-voting memberships shall create only the right to use the Common areas subject to payment of assessments, fees and financial obligations of other Lot owners using said facilities. No non-voting member shall be subject to any architectural control or any restrictions as to the use of Lots not located within the Subdivisions subject to these assessments by virtue of purchasing a membership herein.

ARTICLE V ASSESSMENTS

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

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

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

(c) That there is hereby created a continuing charge and lien upon all Residences owned by owner against which all such assessments are made to secure payment of such assessments and any interest thereon as provided in Section 5.08 hereof and costs of collection including reasonable attorneys' fees.

(d) That such continuing charge and lien on such Residence binds such Residence in the hands of the then Owner, and the Owner's heirs, devisees, legal representatives, successors and assigns. Such charge and lien is superior to any and all charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon such Lots whether arising from or imposed by judgement or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, except (i) such liens for taxes or other public charges as are by applicable law made superior, (ii) any first mortgage on Lot or Lots made for good faith and for value (a "First Mortgage") and (iii) the lien of any secondary purchase money mortgage covering the Lot, provided that neither the grantee nor any successor grantee on the mortgage is the seller of the Lot. Any sale or transfer of a Lot shall not affect such continuing charge and lien, except that a sale or transfer of a Lot pursuant to a foreclosure of a First Mortgage shall extinguish such continuing charge and lien.

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

(f) That all annual, special, Parcel, and specific assessments (together with interest thereon as provided in Section 5.08 of this Declaration and costs of collection including reasonable attorneys' fees actually incurred) levied against any Residence shall be (in addition to being a continuing charge and lien against such Residence as provided in Section 5.01(c) of this Declaration) a personal obligation of the Owner that will survive any sale or transfer of the Owner's Residence; provided, however, that such personal obligation for delinquent assessments shall not pass to an Owner's successor in title unless expressly assumed by such successor.

5.02 Authority to Assess. The Association is hereby authorized to levy assessments for expenses incurred or anticipated to be incurred by the Association in performing its responsibilities and exercising its rights and powers under this Declaration, any Supplementary Declaration, the Articles and the Bylaws specifically including but not limited to: expenses of maintaining, repairing, replacing, improving, operating, and insuring the Area of Common Responsibility, including amounts due to third parties who perform such tasks on behalf of the Association, and the costs of labor, equipment, materials, management, supervision, and utilities; taxes, if any, imposed on the Association or the Common Property; the cost of insurance; expenses of monitoring and enforcing compliance with the provisions of this Declaration and all exhibits hereto and all instruments referenced herein; expenses arising out of the Association's indemnification obligations; expenses of the Architectural Control Committee; expenses of managing the Association, including compensation of management personnel, maintaining books and records, handling Association funds, providing financial reports, and corresponding with members; administrative expenses such as postage, copying expense, office supplies, and equipment; legal, accounting, and other professional fees; and such other expenses as the Board deems necessary or desirable to keep the Community in good, clean, and attractive condition and to maintain the Common Property.

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

5.04 Annual Assessment:

(a) Annual assessments shall be levied equally on all Residences and shall be paid in such manner and on such dates as may be fixed by the Board. Unless otherwise provided by the Board, the initial annual assessment shall be \$625.00, which amount is due and payable on

January 1st of each year unless otherwise provided by the Board. The words "Assessment Year" as used herein shall mean the calendar year unless otherwise provided by the Board. The annual assessments provided for herein shall commence as to a Lot upon the conveyance of such Lot to a person who has not purchased such Lot for the purpose of construction of a Residence and resale of such Lot and Residence. Lots that have not been so conveyed shall not be subject to assessment. The first annual assessment shall be adjusted according to the number of days remaining in the calendar year.

(b) **Assessment Procedure:** The Board shall prepare a budget covering the estimated costs of operating the Association during the coming year, including any capital contributions to be made to a reserve fund. The Board shall cause the budget and a notice of the amount of the assessments to be mailed or delivered to each Owner at least thirty (30) days prior to the end of the current fiscal year. The budget and the assessment shall become effective unless disapproved prior to the end of the fiscal year at a meeting by a majority of Members eligible to vote. The Board is not obligated to call a meeting for such purpose.

In the event the membership disapproves the proposed budget, or the Board fails to establish a budget for the succeeding year, the budget in effect for the then current year shall continue for the succeeding year until changed by the Board. In the event the Board's budget is disapproved, the Board shall have the right to make a new budget retroactive to the start of the fiscal year, subject to the Owners' rights described above.

The Board may establish reasonable payment procedures to allow or require payment of the annual assessment in installments during the Assessment Year. The Board shall also establish payment procedures for payment of any special assessments for capital improvements that may be levied in accordance with the provisions herein. The Board shall have the right to accelerate any unpaid installments in the event an Owner is delinquent.

5.05 Special and Parcel Assessments:

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

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

particular Parcel, which Parcel assessments shall be allocated equally among the Residences in a Parcel.

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

5.07 Contribution by Declarant: For so long as Declarant has the authority to appoint the directors and officers of the Association, Declarant shall not be liable for the payment of any assessments. Provided, however, during said period with respect to any budget deficits, Declarant may (but shall not be required to):

(a) advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association, and the sum of assessments collected by the Association in any assessment year. Unless Declarant otherwise notifies the Board in writing at least sixty (60) days before the beginning of each fiscal year, Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year;

(b) cause the Association to borrow such amount, or a general borrowing from a third party at the then prevailing rates for such a loan in the local area of the Community. 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; or

(c) acquire property for, or provide services to, the Association or the Common Property. Declarant shall designate the value of the property or the services provided and such amounts, at the request of Declarant, may be evidenced by a promissory note. Failure to obtain a promissory note shall not invalidate the obligation referred to in this Section.

5.08 Effect of Non-Payment of Assessments: Any assessment which is not paid on or before the Due Date shall bear interest after the Due Date at the lesser of the maximum rate permitted by law or the rate of ten percent (10%) percent per annum or at such rate as the Board may from time to time establish, provided, however, that in no event shall the Board have the power to establish a rate of interest in violation of the laws of the State of Georgia. In the event of default in the payment of any one or more installments of an assessment, the Board may declare any remaining balance of the assessment at once due and payable. In the event that an Owner shall fail to pay fully any portion of any assessment prior to the date on which payment is due, such unpaid portion (including any remaining balance declared immediately due and payable in accordance with the preceding sentence), together with late charges, interest and costs of collection including reasonable attorneys' fees actually incurred, shall be a binding personal obligation of such Owner, as well as a lien on such Owner's Residence enforceable in accordance with the provisions of this Declaration.

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

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

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

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

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

(c) Any other expenses incurred by the Association pursuant to the Association's right to enforce this Declaration and any other governing documents of the Association, including but not limited to court costs and reasonable attorneys' fees actually incurred.

ARTICLE VI ARCHITECTURAL CONTROL

No exterior construction, alteration, addition, or erection of any nature whatsoever shall be commenced or placed upon any part of the Community, except such as is installed by Declarant or a builder or contractor in accordance with plans approved by Declarant, approved in accordance with this Section, or as is otherwise expressly permitted herein. Except as provided

above, no exterior construction, addition, erection, or alteration shall be made unless and until plans and specifications showing at least the nature, kind, shape, height, color, materials, and location shall have been submitted in writing to and approved by a committee to be established by the Declarant or the Board ("Architectural Control Committee" or "ACC") or by the Board, if no such committee has been established. Provided, however, no approval shall be required for any construction, alteration or addition made by Declarant or a builder or contractor in accordance with plans approved by Declarant.

6.01 Architectural Control Committee - Creation and Composition:

(a) An ACC shall be established consisting of not less than three (3) or more than five (5) individuals, provided, however, that the ACC shall always have an uneven number of members. Notwithstanding anything to the contrary contained herein, Declarant shall have the right, but not the obligation, to appoint all members of the ACC until the first of the following events shall occur: (a) ten (10) years from the date the Declaration was Recorded; (b) the date on which one hundred (100%) of the Lots shall have been conveyed to Persons who have not purchased such Lots for the purpose of construction of a residence and resale unless the Declarant has an unexpired option to annex additional property; or (c) the surrender by Declarant in writing of the authority to appoint and remove members of the ACC. Thereafter, the Board shall appoint the members of the ACC. All costs of operating the ACC, may, at the discretion of Declarant, be borne by the Association. Board members may serve as members of the ACC.

(b) Each initial member of the ACC shall be appointed for a term expiring at the end of the calendar year in which the initial members are appointed. Thereafter each member of the ACC shall be appointed for a calendar-year term. If any vacancy shall occur in the membership of the ACC by reason of death, incapacity, resignation, removal or otherwise, the remaining members of the ACC shall continue to act and such vacancy shall, subject to the provisions of Section 6.01(a), be filled by the Declarant (or Board if at the time the Board has the right to appoint members of the ACC) at the earliest possible time. Any ACC member may resign at any time by giving written notice of such resignation to the Chairman of the ACC and such resignation shall take effect on receipt thereof by the Chairman. The Declarant may remove any member of the ACC at any time with or without cause while the Declarant has power to appoint members of the ACC pursuant to the provisions of Section 6.01(a) hereof or by the Board if at the time the Board has the right to appoint members of the ACC.

6.02 Purpose, Powers, and Duties of the ACC: The purpose of the ACC is to assure that any installation, construction modification or alteration of any Structure on any Lot shall be submitted to the ACC for approval (i) as to whether the proposed installation, construction or alteration is in conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the standards of the Development, and (ii) as to the location of Structures with respect to topography, finished ground elevation, and surrounding Structures. To the extent necessary to carry out such purpose, the ACC shall have all of the powers and duties to do each and every thing necessary, suitable, convenient or proper for, or in

connection with, or incidental to, the accomplishment of such purpose, including, without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any Structure on any Lot. Notwithstanding anything to the contrary contained herein, Declarant shall have the sole right to review the plans for the initial construction of all of the Residences for all of the Lots in the Development until such time as Declarant's right to appoint members to the ACC has expired.

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

6.04 Operations of the ACC:

(a) Meetings: The ACC shall hold regular meetings as necessary to review applications submitted hereunder. Special meetings may be called by the Chairman at any time, and shall be called by the Chairman upon the written request of a majority of the members of the ACC then in office. Regular and special meetings of the ACC shall be held at such time and at such place as the ACC shall specify. Notice of each regular or special meeting of the ACC shall be given to members of the ACC in compliance with the notice provisions of the By-laws, and the business of the ACC shall be conducted in accordance with the meeting provisions of the By-laws.

(b) Activities:

(i) The ACC may adopt and promulgate the Design Standards described in Section 6.05 hereof and shall, as required, make findings, determinations, rulings, and orders with respect to the conformity with said Design Standards of applications to be submitted for approval to the ACC pursuant to the provisions of this Declaration. The ACC shall, as required, issue permits, authorizations or approvals, which may include specified requirements or conditions, pursuant to the provisions of the Declaration.

(ii) Any two (2) or more members of the ACC may be authorized by the ACC to exercise the full authority of the ACC with respect to all matters over which the ACC has authority as may be specified by resolution of the ACC, except with respect to the adoption or promulgation of the Design Standards. The authorized action of two (2) or more members of the ACC with respect to the matters specified shall be final and binding upon the ACC and upon any applicant for an approval, permit or authorization, subject, however, to review and modification by the Declarant or to appeal by the applicant to the ACC as provided in this paragraph (ii). Written notice of any decision of the ACC shall, within five (5) business days thereof, be given to any members of the ACC who did not participate in the decision, the

Declarant, provided Declarant retains the right to appoint members of the ACC, and the Board. So long as Declarant retains the right to appoint members of the ACC, Declarant shall have the right to approve or disapprove any decision of the ACC. Declarant shall give notice to the ACC of Declarant's approval or disapproval of any decision of the ACC within ten (10) business days of Declarant's receipt of notice of said decision. Thereafter, notice of the decision of the ACC (or the Declarant as the case may be) shall be promptly given to any applicant. The applicant may, within ten (10) days after receipt of notice of any decision that he deems to be unsatisfactory, file a written request to have the matter in question reviewed by the ACC; provided, however, that an applicant shall not be entitled to appeal any decision of the Declarant. Upon the filing of any such request, the matter with respect to which such request was filed shall be submitted to and reviewed promptly by the ACC, but in no event shall said review be completed later than thirty (30) days after the filing of such request. The decision of a majority of the members of the ACC with respect to such matter shall be final and binding.

6.05 Design Standards:

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

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

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

(iii) Establishing guidelines for the standards the ACC will use to review applications received by the ACC pursuant to this Article 6.

(b) Declarant shall have the right to review and approve or disapprove any Design Standards promulgated by the ACC during the time that Declarant retains the right to appoint members to the ACC. The ACC shall make a published copy of its current Design Standards, if any, readily available to Members and prospective Members of the Association and to all applicants seeking the ACC's approval.

6.06 Submission of Application: No Structure shall be commenced, erected, placed, moved onto, or permitted to remain on any Lot nor shall any existing Structure upon any Lot be altered in any way which materially changes the exterior appearance of the Structure or Lot, unless application therefore shall have been submitted to and approved in writing by the ACC. Applications shall provide such information as the ACC may reasonably require. Unless otherwise provided herein, 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 the Association, acting through the Board, shall be entitled to stop any construction which is not in conformance with approved plans. Such plans and specifications

shall be in such form and shall contain such information as may be reasonably required by the ACC in the Design Standards, including, without being limited to:

- (a) A site plan showing the location of all proposed and existing Structures on the Lot including building setbacks, open space, and driveways;
- (b) A foundation plan;
- (c) Exterior elevations of all proposed Structures and alterations to existing Structures; and
- (d) Specification of materials, color scheme, and other details affecting the exterior appearance of all proposed Structures and alterations to existing Structures.

6.07 Approval of Application: Upon approval by the ACC and the Declarant of any applications submitted pursuant to this Declaration, two (2) copies of such application, as approved, shall be deposited for permanent record with the ACC, one (1) copy of such application, as approved, shall be provided to Declarant, and a copy of such application bearing such approval, in writing, shall be returned to the applicant submitting the same. Approval for use in connection with any Lot or Structure of any application shall not be deemed a waiver of the ACC's right, in its discretion, to disapprove similar application or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Lot or Structure. Approval of any such application relating to any Lot or Structure, however, shall be final as to that Lot or Structure and such approval may not be revoked or rescinded thereafter, provided that there has been adherence to, and compliance with, such application, as approved, and any conditions attached to any such approval.

6.08 Obligation to Act: The ACC shall take action on any application submitted as herein provided within forty-five (45) days after receipt thereof. Approval by the ACC, if granted, together with any conditions imposed by the ACC, shall be placed in writing on the application and shall be returned to the applicant. Failure by the ACC to take action within forty-five (45) days after receipt of an application submitted for approval shall be deemed approval of such plans and specifications.

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

6.10 Violations: If any Structure shall be erected, placed, maintained or altered upon any Lot, otherwise than in accordance with the plans and specifications approved by the ACC pursuant to the provisions of this Article, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If in the opinion of the ACC such violation shall have occurred, the ACC shall notify the Association and the Board shall take appropriate measures to correct the violation; the Board shall provide written notice to the Owner by certified mail, setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation. If the Owner shall not have taken reasonable steps toward the required remedial action within thirty (30) days after the mailing of the aforesaid notice of violation, then the Association shall have the Right of Abatement as provided in Section 9.02 hereof and all other rights of enforcement as provided in this Declaration.

6.11 Fees: The ACC may impose and collect a reasonable and appropriate fee to cover the cost of review of applications and of inspections performed pursuant to Section 6.09. The fee shall be established from time to time by the ACC and published in the Design Standards.

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

6.13 Disclaimer as to ACC Approval: Applications are not reviewed for engineering or structural design or quality of materials, and by approving such plans and specifications neither the ACC, the members thereof, nor the Association assumes liability or responsibility therefor, nor for any defect in any Structure constructed from such plans and specifications. Neither Declarant, the Association, the ACC, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner of property affected by these restrictions by reason of mistake in judgment, negligence, or non-feasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every Person who submits plans or specifications and every Owner agrees that such Person or Owner will not bring any action or suit against Declarant, the Association, the ARC, the Board, or the officers, directors, members, employees, and agents of any board, or the officers, directors, members, employees, and agents of any of them to recover any damages and hereby releases, remises, quitclaims, and covenants not to sue for all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

6.14 Commencement and Completion of Construction: All improvements approved by the ACC hereunder must be commenced within one year from the date of approval. If not commenced within such time, then such approval shall be deemed revoked by the ACC, unless the ACC gives a written extension for commencing the work. Additionally, except with written ACC approval otherwise, and except for delays caused by strikes, fires, national emergencies, critical materials shortages or other intervening forces beyond the control of the Owner, all work approved by the ACC hereunder shall be completed within ninety (90) days of commencement.

ARTICLE VII GENERAL COVENANTS AND RESTRICTIONS

7.01 General: This Article sets out certain use restrictions that must be compiled with by all Owners and Occupants. These use restrictions may only be amended as provided in this Declaration. In addition, the Board may, from time to time, without consent of the Owners, promulgate, modify, or delete other use restrictions and rules and regulations applicable to the Community. Such use restrictions and rules shall be distributed to all Owners and Occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled, or modified in a regular or special meeting by a majority of the Members eligible to vote. Notwithstanding the above, until such time as one hundred (100%) percent of the Community has been developed and conveyed to purchasers other than Declarant in the normal course of development and sale, no rules and regulations which affect the Declarant may be adopted, modified, or deleted without the written consent of the Declarant.

7.02 Residential Use: Each Residence shall be used for single-family residential purposes only, and no trade or business of any kind may be conducted in or from a Residence or any part of the Community, including business uses ancillary to a primary residential use, except that the Owner or Occupant residing in a Residence may conduct such ancillary business activities within that Residence so long as (a) the existence or operation of the business activity is not readily apparent or detectable by sight, sound, or smell from the exterior of the dwelling; (b) the business activity does not involve frequent visitation of the Residence by employees, clients, customers, suppliers or other business invitees; provided, however, this provision shall not preclude delivery of materials or items by United States Postal delivery or by other customary parcel delivery services (UPS, Federal Express, etc.); (c) the business activity conforms to all zoning requirements for the Community; (d) the business activity does not unduly increase traffic in the Community; (e) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage; and (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, as may be determined in the Board's sole discretion. The Board may issue rules regarding permitted business activities consistent with the provisions herein. Nothing contained hereinabove shall serve to limit or in any way restrict the right of Declarant or any related party, affiliate, agent or designee of Declarant from using all or

any part of a Lot as a construction office, model home, or sales office for the purpose of developing and marketing the Community. All County zoning restrictions applicable to this Property shall be observed. In the event of any conflict between any provision of such codes, regulations and the provision of such codes, regulations and restrictions and the provisions of the Declaration, the more restrictive provisions shall apply.

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

7.04 Erosion Control. No activity which may create erosion or siltation problems shall be undertaken on any Lot without the prior written approval of the ACC of plans and specifications for the prevention and control of such erosion or siltation. The ACC may, as a condition of approval of such plans and specification, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include (by way of example and not of limitation) physical devices for controlling the run-off and drainage of water, special precautions in grading and otherwise changing the natural landscape, and required landscaping as provided for in Section 7.05. Guidelines for the prevention and control of erosion and siltation may be included in the Design Standards of the ACC.

7.05 Landscaping. No construction or alteration of any Structure shall take place without the prior written approval by the ACC of plans and specifications for the landscaping to accompany such construction or alteration. Guidelines for the landscaping to accompany the construction or alteration of any Structure may be included in the Design Standards of the ACC. No trees that are more than four inches (4") in diameter at a point two (2) feet above the ground shall be removed without the prior written consent of the ACC. However, no flowering trees, including, without limitation, dogwood trees, regardless of their diameter, shall be removed without the prior written consent of the ACC.

7.06 Temporary Buildings. No mobile home, travel trailer, temporary building, shed or shack is permitted except during the period that construction of a permanent residence on a Lot is in progress or in relation to Declarant's construction and development activities. No temporary building, trailer, garage, or building under construction on any Lot shall be used, temporarily or permanently, as a residence.

7.07 Signs. No signs whatsoever (including, but not limited to, commercial and similar signs) shall, without the ACC's prior written approval of plans and specifications therefor, be installed, altered or maintained on any Lot, or on any portion of a Structure visible from the exterior thereof, except: (i) Such signs as may be required by legal proceedings and for display of all building permits; (ii) Professionally lettered "For Sale" and "For Rent" signs not exceeding two (2') feet by two (2') feet in size and security signs not exceeding six (6") inches by six (6") inches in size; provided that such sign may only be displayed in the front yard of a Lot; and, provided, further, that if, at the time of any desired use of such sign, the Association is making "For Sale" signs available for the use of Owners, the signs made available by the Association must be used; (iii) Not more than one lot identification sign in accordance with application approval by the ACC; and (iv) Directional signs for vehicular or pedestrian safety in accordance with application approved by the ACC. In no event during approved construction of any Structure shall more than one job identification sign be approved by the ACC. Notwithstanding the foregoing, the Board and Declarant shall have the right to erect reasonable and appropriate signs and shall have an easement for such signs as provided herein.

7.08 Setbacks. In approving plans and specifications for any proposed Structure, the ACC may establish setback requirements for the location of such Structure. Guidelines for setbacks may be included in the Design Standards of the ACC. No Structure shall be erected or placed on any Lot unless its location is consistent with such setbacks.

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

front or side if said side is a front street view side. Wood fences are permitted, finished s ... turned out and shall enclose rear yard only. No fence shall extend beyond rear corner of house. Declarant or ACC must approve any fence or wall prior to installation. Said approval shall include materials used and cosmetic features.

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

7.11 Antennas. No satellite dishes, antennas, and similar devices for the transmission of television, radio, satellite, or other signals of any kind shall be placed, allowed, or maintained within the Community, except that Declarant and the Association shall have the right, without obligation, to erect or install and maintain any such apparatus for the benefit of all or a portion of the Community, and (i) satellite dishes designed to receive direct broadcast satellite service which are one (1) meter or less in diameter; (ii) satellite dishes designed to receive video programming services via multi-point distribution services which are one (1) meter or less in diameter or diagonal measurement; or (iii) antennas designed to receive television broadcast signals ((i), (ii), and (iii), collectively, "Permitted Devices") shall be permitted, *provided that* any such Permitted Device is placed in the least conspicuous location on the Lot (generally being the rear of said Lot) at which an acceptable quality signal can be received and is not visible from the street, Common Property, or neighboring property or is screened from the view of adjacent Residences in a manner consistent with the Development-Wide Standard and any design guidelines.

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

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

7.14 Maintenance. Each Owner shall keep and maintain each Lot and Structure owned by him, as well as all landscaping located thereon, in good condition and repair, including, but not limited to (i) the repairing and painting (or other appropriate external care) of all Structures, (ii) the seeding, watering and mowing of all lawns, and (iii) the pruning and trimming of all trees, hedges and shrubbery so that the same are not obstructive of a view by motorists or pedestrians of street traffic. Notwithstanding the foregoing, the maintenance required hereunder shall also extend from the boundary of a Lot to the curb of the street bordering said Lot. If in the opinion of the ACC, any Owner shall fail to perform the duties imposed by this Section, the ACC shall notify the Association. If the Board shall agree with the determination of the ACC with respect to the failure of said Owner to perform the duties imposed by this Section, then the Board shall give written notice to the Owner to remedy the condition in question, setting forth in reasonable

detail the nature of the condition and the specific action or actions needed to be taken to remedy such condition. If the Owner shall fail to take reasonable steps to remedy the condition within thirty (30) days after the mailing of said written notice by certified mail, then the Association shall have the Right of Abatement as provided in Section 9.02 hereof. Guidelines relating to the maintenance of Structures and landscaping may be included in the Design Standards of the ACC.

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

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

7.17 Non-Discrimination. No Owner or person authorized to act for an Owner shall refuse to sell or rent, after receiving a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the purchase or rental of any Lot to any person because of race, color, religion, sex, age, or national origin. Anything in this Declaration to the contrary notwithstanding, this covenant shall run with the land and shall remain in effect without any limitation in time.

7.18 Animals and Pets. No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot, with the exception of dogs, cats, or other usual and common household pets in reasonable number, as determined by the Board. No pets shall be kept, bred, or maintained for any commercial purpose. Dogs that are household pets shall be kept on a leash when outside of an Owner's Lot. All pets shall be registered, licensed, and vaccinated as required by law. Pets that endanger health or safety, make objectionable noise, or constitute a nuisance or inconvenience to the Owners or Occupants must be removed by their Owner upon request of the

Board. If the Owner fails to honor such request, the Board may remove the pet. No animal shall be allowed to become a nuisance. No Structure for the care, housing or confinement of any animal shall be constructed, placed or altered on any Lot unless plans and specifications for said Structure have been approved by the ACC.

7.19 Solid Waste.

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

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

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

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

7.20 Nuisance. Without prior written Board consent, nothing shall be done or kept on any portion of the Community or any part thereof which would increase the rate of insurance on the property or any Residence or part thereof, which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body, or which would increase the Common Expenses.

Noxious, destructive or offensive activity shall not be carried on upon any portion of the Community. Each Owner shall refrain from any act or use of his or her Residence that could reasonably cause embarrassment, discomfort, nuisance or annoyance to other Owners or Occupants. No Owner or Occupant of a Residence may use or allow the use of the Residence or any portion of the property in the Community in any way or for any purpose which may endanger the health or unreasonably annoy or disturb other Owners or Occupants of a portion of the property in the Community, or in such a way as to constitute, in the Board's sole opinion, a nuisance. Nothing herein, however, shall be construed to affect the rights of an aggrieved Owner to proceed individually for relief from interference with his or her property or personal rights. No Owner or Occupant of a Residence may use or allow the use of the Residence or the Common Property in any manner which creates disturbing noises between the hours of 11:00 p.m. and 7:30

a.m. that will, in the Board's sole discretion, unreasonably interfere with the rights, comfort or convenience of the other Owners or Occupants.

No Owner shall do any work that, in the Board's reasonable opinion, would jeopardize the soundness or safety of any property in the Community or any structure created thereon, would reduce the value thereof, or would impair any easement or hereditaments thereto, without prior written consent of all Association Members and their Mortgagees. No damage to or waste of the Common Property, or any part thereof, or of the exterior of any building constructed upon any Residence shall be permitted by any Owner or member of his or her family or any invitee of any Owner. Each Owner shall indemnify and hold the Association and the other Owners harmless against all loss to the Association or other Owners resulting from any such damage or waste caused by such Owner, members of his or her family, guests, invitees, or Occupants of his or her Residence.

7.21 Drainage. Catch basins and drainage areas and storm water retention facilities are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant may alter, obstruct, or rechannel the drainage flows after location and installation of drainage swales, retention facilities or vaults, storm sewers, or storm drains, the right to alter same being expressly reserved to Declarant.

7.22 Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit an unobstructed view across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

7.23 Occupants Bound. All provisions of the Declaration, Bylaws and 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 all Occupants even though Occupants are not specifically mentioned. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not paid on a timely basis, the fine may then be levied against the Owner.

7.24 Residence-Construction Standards. Declarant retains the sole and exclusive right to review all applications, plans, and specifications for the construction of each Residence until such time as a residence has been completed on each Lot in the community. Until such time as one hundred (100%) of the Lots shall have been conveyed to Persons who have not purchased such Lots for the purpose of construction of a residence and resale and unless otherwise waived or modified by Declarant, the following standards shall control:

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

(b) Roofs shall have no less than 8-12 pitch.

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

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

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

(f) All front yards shall be sodded.

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

7.25 Leasing. Lots may be leased for residential purposes only. All leases shall have a minimum term of at least six (6) months. All leases shall include a provision stating that the tenant acknowledges receipt of a copy of the Declaration, Bylaws, use restrictions, and rules and regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing documents and shall provide that in the event of noncompliance, the Board, in addition to any other remedies available to it, may evict the tenant on behalf of the Owner and specifically assess all costs associated therewith against the Owner and Owner's property. There shall be no subleasing or assignment of leases unless approved in writing by the Board. Residences may be leased only in their entirety; no fraction or portion may be leased.

(a) Notice. Within ten (10) days after entering into the lease of a Residence, the Owner shall provide the Board of Directors with the name and phone number of the lessee and the names of all other people occupying the Residence, the Owner's address other than at the Residence, and such other information as the Board may reasonably require. Notwithstanding anything in the Declaration to the contrary, failure to provide the above information to the Board within ten (10) days after entering into the lease of a Residence may result in a fine against the Owner for each day that the information is not provided to the Board. Nothing herein shall be construed as giving any party the right to approve or disapprove a proposed lessee.

(b) Liability for Assessments, Use of Common Property, and Compliance with Declaration, Bylaws, and Rules and Regulations. Any lease of a Residence shall be deemed to contain the following provisions, whether or not expressly stated therein, and each Owner covenants and agrees that any lease of a Residence 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, and the lessee, by occupancy of the Residence, agrees to the applicability of this covenant and incorporation of the following language into the lease:

(i) Compliance with Declaration, Bylaws, and Rules and Regulations. Lessee agrees to abide and comply with all provisions of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto. Owner agrees to cause all Occupants of his or her Residence to comply with the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto and is responsible for all violations and losses caused by such Occupants, notwithstanding the fact that such Occupants of the Residence are fully liable and may be sanctioned for any violation of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto. 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, such fine may be assessed against the lessee and/or the Owner; provided, however, if a fine is not paid by the lessee within the time period set by the Board of Directors, the Owner shall pay the fine upon notice from the Association of the lessee's failure to do so. Any lessee charged with a violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto is entitled to the same procedure to which an Owner is entitled prior to the imposition of a fine or other sanction.

Any violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto is deemed to be a violation of 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 to evict the lessee on behalf of and for the benefit of the Owner, in accordance with the terms hereof, or to require the Owner to do so. In the event the Association proceeds to evict the lessee, any costs, including attorney's fees and court costs, associated with the eviction shall be specially assessed against the Residence and the Owner thereof, such being deemed hereby as an expense which benefits the leased Residence and the Owner thereof.

(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 and other amenities.

(iii) Liability for Assessments. Lessee agrees to be personally obligated for the payment of all annual and special assessments and all other charges against the Owner which become due during the term of the lease and any other period of occupancy by the lessee or which become due as a consequence of lessee's activities, including, but not limited to, activities which violate provisions of the Declaration, the Bylaws, or the rules and regulations adopted pursuant

thereto. 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.

When a Residence Owner who is leasing his or her Residence 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 Residence Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board of Directors, lessee shall pay to the Association all unpaid annual and special assessments and other charges, as lawfully determined and made payable during the term of the lease and any other period of occupancy by lessee; provided, 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 with the Board's request to pay assessments or other charges, lessee shall pay to the Association all late charges, fines, interest, and costs of collection, including, but not limited to, reasonable attorney's fees actually incurred, to the same extent lessee would be required to make such payments to the Association if lessee were the Owner of the premises during the term of the agreement and any other period of occupancy by lessee.

(c) Applicability of Leasing Restrictions. The leasing restrictions contained in this section shall not apply to any leasing transaction entered into by either the Declarant or the holder of any first Mortgage on a Residence who becomes the Owner of a Residence through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage. In addition to the foregoing, the leasing restrictions herein shall also not apply to any leasing transaction in which a Residence is being leased by or to the Declarant or any related affiliate, agent, or designee of Declarant for use as a model residence or for a construction, development, and/or sales office.

ARTICLE VIII EASEMENTS, ZONING, AND OTHER RESTRICTIONS

8.01 Easements:

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

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

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

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

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

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

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

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

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

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

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

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

8.07 Existing Easements: These covenants and conditions shall be subject to the rights granted in existing easements of record providing for access to Subdivision roads and rights-of-way.

8.08 Easements for Use and Enjoyment: Every Lot's Owner shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property that shall be appurtenant to and shall pass with the title to each Lot, subject to the following provisions:

(a) the right of the Association to limit the number of guests of Owners and occupants 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 family, tenants, guests, and invitees;

(b) the right of the Association to suspend the voting rights of an Owner for any period during which an assessment against such Owner's Lot which is hereby provided for remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, Bylaws, or rules and regulations;

(c) the right of the Association to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property; however, the lien and encumbrance of any such Mortgage given by the Association shall be subject and subordinate to any rights, interest, options, easements and privileges herein reserved or established for the

benefit of Declarant, or any Lot or Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Community. Any such Mortgage on the Common Property shall be subject to approval by at least two-thirds (2/3) of the Members entitled to vote (excluding votes held by Declarant). 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 Declarant, or any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Community;

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

(e) 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 at least two-thirds (2/3) of the Members entitled to vote excluding votes held by Declarant.

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

8.09 Construction and Sale Period Easement: Notwithstanding any provisions contained in this Declaration, the By-Laws, Articles of Incorporation, use restrictions, rules and regulations, design guidelines, and any amendments thereto, so long as Declarant owns any property in the Community for development or sale, Declarant reserves an easement across the Community for Declarant and any builder or developer approved by Declarant to maintain and carry on, upon such portion of the Community as Declarant may reasonably deem necessary. This reserved easement shall include an easement for such facilities and activities that, in the sole opinion of Declarant may be required, convenient, or incidental to the development, construction, and sales activities related to property within or near the Community. This easement shall include, without limitation:

(a) the right of access, ingress, and egress for vehicular and pedestrian traffic and construction activities over, under, on, or in any portion of the Community as well as any Lot in the Community;

(a) the right to tie into any portion of the Community with driveways, parking areas and walkways;

(c) the right to tie into 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;

(d) the right (but not the obligation) to construct recreational facilities on Common Property;

(d) the right to carry on sales and promotional activities in the Community;

(f) the right to place direction and marketing signs on any portion of the Community, including on any Lot or on the Common Area;

(g) the right to construct and operate business offices, signs, store construction material, construction trailers, model residences, and sales offices incidental to the construction, development and sales activities; and

(h) Declarant and any such builder or developer may use residences, offices, or other buildings owned or leased by Declarant or such builder or developer as model residences and sales offices, and may also use recreational facilities available for use by the Community as a sales office or for marketing purposes without charge. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, and reasonable steps shall be taken to protect such property from damage. The Person causing the damage at his or her sole expense shall repair any damage. This Section shall not be amended without Declarant's express written consent until Declarant's rights hereunder have terminated as provided in this Declaration.

8.10 Fence Easement: Declarant hereby reserves an easement across any Lot which borders upon or contains a portion of any water facility, detention pond, or retention pond for the purpose of access to such facility or pond, and for the purpose of erecting any fence which is either required by the Subdivision development and construction plans or governmental regulation, rule, ordinance, or plan approval requirement.

8.11 Easement to Inspect and Right to Correct: Declarant reserves for itself and such other Persons as it may designate perpetual non-exclusive easements throughout the Community to the extent reasonably necessary for the purposes of access, inspecting, testing, redesigning, or correcting any portion thereof, including dwellings and the Common Property. Declarant shall have the right to redesign or correct any part thereof. Entry into a dwelling shall be after reasonable notice, except in an emergency. Any damage to a dwelling, Lot, or the Common Property resulting from the exercise of the easement or right of entry shall promptly be repaired by, and at the expense of, the Person exercising the easement right.

8.12 Easement for Drainage: Declarant hereby reserves a perpetual easement across all Community property for the purpose of altering drainage and flow. This right shall include, but

is not limited to, altering swales, installing drains, drainage ditches, pipes, inlets, headwalls, and altering channeling, or piping waterflow across any Lot or any property in the Community. Rights exercised pursuant to this reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

8.13 Easement for Entry: In addition to the other rights reserved to Declarant and the Association, Declarant or the Association shall have the right (but not the obligation) to enter upon any property, dwelling, or Residence within the Community to perform maintenance or other activities required by this Declaration and for emergency, security, and safety reasons. This right may be exercised by Declarant or its designee, any officer of the Board, and all governmental employees, policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Board to enter to cure any condition that may increase the possibility of a fire, slope erosion, or other hazard.

ARTICLE VIII ENFORCEMENT

9.01 Enforcement: Each Owner and Occupant shall comply strictly with this Declaration, the Bylaws, the rules and regulations, and the use restrictions, as they may be lawfully amended or modified from time to time. Failure to comply with this Declaration, the Bylaws, or the rules and regulations or the use restrictions shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by Declarant, the Board of Directors, on behalf of the Association, or in a proper case, by an aggrieved Owner.

The Board may impose fines or other sanctions after following the notice and hearing procedures set forth in the Bylaws, which shall be collected as provided herein for the collection of assessments. The Board shall have the right to Record a notice of violation of the Declaration, Bylaws, rules and regulations, use restrictions; or design guidelines and to assess the cost of recording and removing such notice against the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

Failure by the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. All remedies set forth in this Declaration shall be cumulative of any remedies available at law or in equity. In any action to enforce the Declaration, Bylaws, the rules and regulations, or the use restrictions, if the Association prevails, it shall be entitled to recover court costs and reasonable attorneys' fees actually incurred in such action.

9.02 Right of Abatement:

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

(b) The Right of Abatement means the right of the Association, through its agents and employees, to enter at all reasonable times upon any Lot or Structure as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove or repair such violation, breach or other condition which may exist thereon contrary to the provisions hereof, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and such actions, provided such entry and such actions are carried out in accordance with the provisions of this Section, and with the cost thereof including the costs of collection and reasonable attorneys' fees, actually incurred, together with interest thereon at the lower of the highest rate permitted by law or twelve (12%) percent to be an assessment against said Owner's Lot and a binding personal obligation of such Owner enforceable at law, as well as a lien on such Owner's Lot enforceable pursuant to the provisions herein. Such lien shall be superior to any and all charges, liens or encumbrances which may in any manner arise or be imposed upon the Lot after such entry whether arising from or imposed by judgement or decree or by any other agreement, contract, mortgage, deed to secure debt, or other instrument, excepting only (i) such liens for taxes or other public charges as are by applicable law made superior, (ii) the liens created by Section 5.01 hereof, (iii) any First Mortgage made in good faith and for value on a Lot or Lots, and (iv) the lien of any secondary purchase money mortgage covering the Lot, provided that neither the grantee nor any successor grantee on the mortgage is the seller of the Lot. Any sale or transfer of a Lot shall not affect such lien, except that sale or transfer of a Lot pursuant to a foreclosure of a Prior Recorded First Mortgage shall extinguish such lien.

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

9.04 Collection of Assessments and Enforcement of Lien:

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

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

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

9.06 Dispute Resolution. Prior to filing a lawsuit against the Association, the Board, or any officer, director, or property manager of the Association, a Unit Owner or Occupant must request and attend a hearing with the Board of Directors. Any such request shall be in writing and shall be personally delivered to any member of the Board of Directors or the property manager, if any, of the Association. The Owner or Occupant shall, in such request 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 not less than seven (7) or more than twenty-one (21) days from the date of receipt of the request.

**ARTICLE IX
DURATION AND AMENDMENT**

10.01 Duration: The covenants, conditions, restrictions and easements contained in this Declaration shall run with and bind the Community and shall inure to the benefit of and shall be enforceable by the Association, the Declarant and any Owner, their respective legal

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

10.02 Amendments by Declarant: During any period in which Declarant retains the right to annex additional property to this Declaration, Declarant may amend this Declaration by an instrument in writing, filed and recorded in the Deed Records of the Superior Court of Forsyth County, Georgia, without the approval of any Member or mortgagee; provided, however, that (i) in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of such Owner's Lot or of the Common Property as set forth in this Declaration or if such amendment adversely affects the title to any Lot, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Members affected thereby, or (ii) in the event that such amendment would materially and adversely affect the security title and interest of any mortgagee, such amendment shall be valid only upon the written consent thereto of all such mortgagees so affected. Declarant shall certify any amendment made pursuant to this Section 10.02 as having been duly approved by Declarant, and such Members and mortgagees, if required, and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself. Each Owner, by acceptance of a deed or other conveyance to a Lot, agrees to be bound by such amendments as are permitted by this Section 10.02 and further agrees that, if requested to do so by Declarant, such Owner will consent to the amendment of this Declaration or any other instruments relating to the Development (i) if such amendment is necessary to bring any provision hereof or thereof into compliance with the provisions of any applicable governmental statute, rule or regulation or any judicial determination which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots subject to this Declaration, (iii) if such amendment is required by an institutional or governmental lender, purchaser or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any Lot subject to this Declaration, (iv) if such amendment is necessary to enable any government agency or reputable private insurance company to insure mortgage loans on the Lots subject to this Declaration, or (v) if such amendment is necessary to correct a scrivener's error in the drafting of this Declaration.

10.03 Amendments by Association: Amendments to this Declaration, other than those authorized by Section 10.02 hereof, shall be proposed and adopted in the following manner:

(a) Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Association at which such proposed amendment is to be considered and shall be delivered to each Member of the Association.

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

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

ARTICLE X MISCELLANEOUS

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

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

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

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

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

Declarant: Callas Development Corporation, Inc.
Leonard E. Callas, President
4360 North Industrial Drive
Cumming, Georgia 30041

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

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

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

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

11.07 Insurance:

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

(b) Immediately after the damage or destruction by fire or other casualty to all

or any portion of any improvement covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty.

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

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

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

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

(d) 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.

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

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

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

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

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

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

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

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

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

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

(g) The Association shall obtain and maintain a blanket fidelity bond for all officers, directors, and employees of the Association and all other persons who handle, or are responsible for, funds of or administered by the Association. If the Association engages a

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

11.08 Variances: Notwithstanding anything to the contrary contained herein, the Declarant or the Board of Directors of the Association or the designee of either of them shall be authorized to grant individual variances from any of the provisions of this Declaration, the By-Laws, and any rule, regulation, or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Development.

11.09 Partition: The Common Property shall remain undivided, and no Owner nor any other Person shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Community and without the written consent of all holders of all Mortgages encumbering any portion of the property, including, but not necessarily limited to, the Residences located within the Community.

11.10 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.

11.11 Indemnification: To the fullest extent allowed by applicable Georgia law, the Association shall indemnify every officer of the Association and director of the Association against any and all expenses, including, without limitation, attorneys' fees, imposed upon or reasonably incurred by any officer or director in connection with any action, suit, or other proceeding to which such officer or director may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors 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 or directors may also be Members of the Association), and

the Association shall indemnify and forever hold each such officer and director 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 or director, or former officer or director, may be entitled. This indemnification shall also include attorneys' fees and expenses incurred in enforcing this indemnification. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

11.12 Books and Records.

(a) All members of the Association and any 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 or mortgagee 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 11.11(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 accounts 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.

11.13 Financial Review: A review of the books and records of the Association shall be made annually in the manner as the Board may decide; however, after having received the Board's financial statements at their annual meeting, the Owners may require by a majority vote of all Members eligible to vote, that the accounts of the Association be audited as a Common Expense by a certified public accountant. Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs, such holder shall be entitled to receive a copy of audited financial statements within ninety (90) days of the date of the request.

11.14 Notice of Sale, Lease, or Acquisition: In the event an Owner sells or leases such Owner's Unit, the Owner shall give to the Association prior to the effective date of such sales or lease, the name of the purchaser or lessee of the Residence and such other information as the Board may reasonably require in writing. Upon acquisition of a Residence, each new Owner shall give the Association the name and mailing address of the Owner and such other information as the Board may reasonably require in writing.

11.15 Agreements: Subject to the prior approval of Declarant (so long as Declarant owns any property for development or sale in the Community, or has the right to unilaterally annex additional property to the Community) all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board 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.

11.16 Implied Rights: The Association, may exercise any right or privilege given to it expressly by the 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 therein or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in these governing documents, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

The Board may institute, defend, settle, or intervene on behalf of the Association in alternative dispute resolution, litigation, or administrative proceedings in matters pertaining to the Area of Common Responsibility, enforcement of these governing documents, or any other civil claim or action. However, this Declaration shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Association or its members. In exercising the rights and powers of the Association, making decisions on behalf of the Association, and conducting the Association's affairs, Board members shall be subject to, and their action shall be judged in accordance with, the standards of the business judgment rule.

11.17 Safety and Security: Each Owner and Occupant of a Residence, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Community. The Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to enhance the level of safety or security that each Person provides for himself and his property. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety or security, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security nor ineffectiveness of security measures undertaken. No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the Community cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing its tenants and all Occupants of its Residence that the Association, its Board and committees, and Declarant are not insurers or guarantors of security or safety and that each Person within the Community assumes all risks of personal injury and loss or damage to property, including dwellings and the contents of dwellings, resulting from acts of third parties.

ARTICLE XII MORTGAGEE PROVISIONS

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

12.01 Special Mortgagee Provisions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Voting;

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

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

(D) Insurance or fidelity bonds;

- (E) Rights to use of the Common Property;
- (F) Responsibility for maintenance and repair of the several portions of the Property;
- (G) Expansion or contraction of the Property or the addition, annexation or withdrawal of land to or from the Property;
- (H) Boundaries of any Lot;
- (I) Convertibility of Lots into Common Property or of Common Property into Lots;
- (J) Leasing of Lots;
- (K) Imposition of any right of first refusal or similar restriction on the right of a Lot owner to sell, transfer, or otherwise convey his or her Lot;
- (L) Establishment of self-management by the Association where professional management, if any, has been employed;
- (M) The approval of Eligible Holders of first mortgages on Lots to which at least fifty-one (51%) percent of the votes of Lots subject to a mortgage appertain, shall be required to amend any provisions included in this Declaration, the By-Laws or the Articles of Incorporation which are for the express benefit of holders or insurers of first mortgages on Lots.

(e) The provisions of this Section 12.01 shall not be construed to reduce the percentage vote that must be obtained from mortgagees of Lot Owners where a larger percentage vote is otherwise required by applicable law or in any other provision in the Declaration, the By-Laws or the Articles of Incorporation for any of the actions contained in this Section 12.01.

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

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

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

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

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

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

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

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

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

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

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

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

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

**ARTICLE XIII
LITIGATION**

No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least seventy-five percent (75%) of the Members entitled to vote. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided in this Declaration (c) proceedings involving challenges to taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended during the time period when Declarant owns any property for development or sale in the Community, or has the right to unilaterally annex additional property to the Community unless Declarant makes such amendment.

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

Signed, sealed and delivered
in presence of:

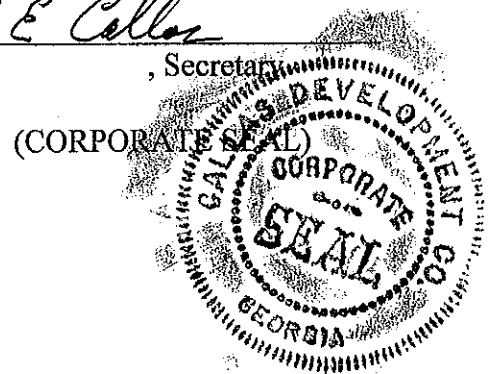
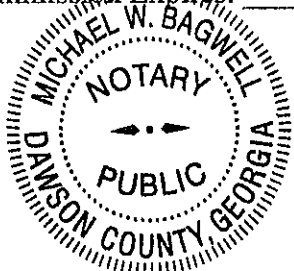
CALLAS DEVELOPMENT COMPANY, INC.,
a Georgia corporation

Stacey Beasley
Unofficial Witness

BY: Leonard Collier
President

Michael W. Bagwell
Notary Public
Commission Expires: _____

ATTEST: R. E. Collier
Secretary



Notary Public, Dawson County, Georgia
My Commission Expires August 1, 2006

EXHIBIT "A"

Property Subject to this Declaration
Legal Description

Legal Description for:
Magnolia Creek S/D

All that tract or parcel of land lying and being in Land Lots 404, 460 & 461 of the 3rd District, 1st Section of Forsyth County, Georgia and being more particularly described as follows:

The True Point of Beginning of the property being described is at the intersection of Land Lots 404, 405, 460 & 461.

Beginning at the True Point of Beginning;
thence North 00 °d 34'27" East
a distance of 1372.08 to point;
thence South 89 °d 51'47" East
a distance of 1340.54 to point;
thence South 00 °d 09'47" West
a distance of 1359.41 to point;
thence South 00 °d 50'15" West
a distance of 520.03 to point;
thence North 87 °d 34'58" West
a distance of 318.00 to point;
thence North 34 °d 29'27" East
a distance of 198.42 to point;
thence North 06 °d 40'34" West
a distance of 60.00 to point;
thence North 84 °d 11'20" West
a distance of 70.26 to point;
thence South 86 °d 17'42" West
a distance of 171.27 to point;

thence South 65 °d 46'01" West
a distance of 203.37 to point;
thence North 84 °d 28'03" West
a distance of 90.92 to point;
thence South 44 °d 34'51" West
a distance of 217.28 to point
which is on the northern R/W
of Hwy. 369(100' R/W);
thence along said R/W the
following courses and distances;
North 56 °d 51'35" West
a distance of 46.56 to point;
thence North 51 °d 32'46" West
a distance of 102.20 to point;
thence North 46 °d 38'34" West
a distance of 101.00 to point;
thence North 43 °d 23'44" West
a distance of 103.18 to point;
(continued on page 2)

thence North 41 °d 54'32" West
a distance of 110.49 to point;
thence leaving said R/W
North 47 °d 37'32" East
a distance of 240.63 to point;
thence North 42 °d 22'28" West
a distance of 59.70 to point;
thence North 19 °d 27'54" West
a distance of 86.50 to point;
thence North 60 °d 33'57" West
a distance of 29.98 to point
concave Southwesterly
having a radius of 100.45 feet
19.19 feet along said curve
along said curve having a chord direction of South 23 °d 59'58" West
and a chord length of 19.16 feet;
concave Southwesterly
having a radius of 125.00 feet
100.00 feet along said curve
along said curve having a chord direction of South 41 °d 21'32" West
and a chord length of 97.36 feet;
thence South 64 °d 16'40" West
a distance of 64.58 to point;
concave Southwesterly
having a radius of 175.00 feet
50.81 feet along said curve
along said curve having a chord direction of South 55 °d 57'34" West
and a chord length of 50.64 feet;
thence South 47 °d 38'28" West
a distance of 16.85 to point;
thence South 02 °d 38'28" West
a distance of 28.28 to point
which is on the northern R/W
of Hwy. 369(100' R/W);
thence along said R/W
North 42 °d 21'32" West
a distance of 102.29 to point;

thence leaving said R/W
North 89 °d 38'03" East
a distance of 48.26 to point
which is the True Point of Beginning
of the property being described;
containing 52.41 acres more or less.

EXHIBIT "B"

Property that may be subjected to this Declaration

Legal Description

Any tract or parcel of land within a ten (10) miles radius of the property described in Exhibit "A", which may be acquired or annexed by the Declarant for future development as part of Magnolia Creek of Forsyth Subdivision.

EXHIBIT "C"
BYLAWS
OF
MAGNOLIA CREEK OF FORSYTH HOMEOWNERS ASSOCIATION, INC.

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BYLAWS
OF
MAGNOLIA CREEK OF FORSYTH SUBDIVISION

Article I.

Name, Membership, Applicability, and Definitions

- 1.1 **Name.** The name of the Association shall be Magnolia Creek of Forsyth Subdivision ("Association").
- 1.2 **Membership.** The Association shall have two (2) classes of Membership, as is more fully set forth in that Declaration of Covenants, Conditions and Restrictions for Magnolia Creek of Forsyth ("Declaration"), the terms of which pertaining to Membership are specifically incorporated by reference herein. A "Member" is any Person designated as a Member in the Declaration.
- 1.3 **Definitions.** The words used in these Bylaws shall have the same meaning as set forth in the Declaration, unless the context shall prohibit. Unless otherwise defined herein, all capitalized terms herein shall have the meaning given to them in the Declaration.

Article II.

Association: Meetings, Quorum, Voting, and Proxies

- 2.1 **Place of Meetings.** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Board, either in the Community or as convenient thereto as possible and practical.
- 2.2 **First Meeting and Annual Meetings.** An annual or special meeting of the Members shall be held within one (1) year from the date the Declaration is Recorded. Annual meetings shall be set by the Board so as to occur within sixty (60) days before or after the close of the Association's fiscal year.
- 2.3 **Special Meetings.** The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of the Board or upon a petition signed by at least twenty-five (25%) of the Members eligible to vote (the consent of Declarant shall not be required). The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting, except as stated in the notice.
- 2.4 **Notice of Meetings.** It shall be the duty of the Secretary to mail or to cause to be delivered to the Owner of each Lot (as shown in the records of the Association) a notice of each annual or special meeting of the Association stating the time and place where it is to be held. The notice for a special meeting shall state the purpose of the meeting. If an Owner wishes notice to be given at an address other than the Lot, the Owner shall designate such other address by notice in writing to the Secretary. The mailing or delivery

of a notice of meeting in the manner provided in this Section shall be considered service of notice. Notices shall be served not less than ten (10) or more than sixty (60) days before a meeting.

- 2.5 Waiver of Notice. Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member, whether in person or by proxy, shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order.
- 2.6 Adjournment of Meetings. If any meetings of the Association cannot be held because a quorum is not present, a majority of the Members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At such adjourned meeting at which a quorum is present, any business that might have been transacted at the meeting originally called may be transacted without further notice.
- 2.7 Voting. The voting rights of the Members shall be as set forth in the Declaration, and such voting rights are specifically incorporated herein.
- 2.8 Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing, dated, and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of such Member's Lot or upon receipt of notice by the Secretary of death or judicially declared incompetence of a Member, or of written revocation, or upon the expiration of eleven (11) months from the date of the proxy.
- 2.9 Quorum. The presence, in person or by proxy, of twenty-five (25%) of the Members entitled to vote shall constitute a quorum at all meetings of the Association. The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.
- 2.10 Action Without a Formal Meeting. Any action which may be taken at a meeting of the Members, may be taken without a meeting if one or more written consents setting forth the action so taken shall be signed by Members holding the number of votes required to pass such action. Action taken without a meeting shall be effective on the date that the last consent is executed and the action is consented to by Declarant, if required, unless a later effective date is specified therein. Each signed consent shall be delivered to the Association and shall be included in the minutes of meetings of Members filed in the permanent records of the Association.
- 2.11 Written Ballot. Any action to be taken at any annual or special meeting of Members may be taken without a meeting if approved by written ballot as provided herein. The Association shall deliver a written ballot to each Member entitled to vote on the matter. The written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot of an action shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting held to authorize such action and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

All solicitations for votes by written ballot shall indicate the number of responses needed to meet the quorum requirements; state the percentage of approvals necessary to approve each matter other than election of directors; and specify the time by which a ballot must be received by the Association in order to be counted. A timely written ballot received by the Association may not be revoked without the consent of the Board. The results of each action by written ballot shall be certified by the Secretary and shall be included in the minutes of meetings of Members filed in the permanent records of the Association.

2.12 Use of Technology.

- (a) Electronic Means. Notwithstanding anything to the contrary contained in these By-Laws or the Declaration, to the extent permitted by law, the Association and its Members, Owners and occupants may perform any obligation or exercise any right by use of any technological means providing sufficient security, reliability, identification and verifiability. Acceptable technological means shall include without limitation electronic communication over the Internet, the community or other network, whether by direct connection, Internet, telecopy or electronic mail.
- (b) Signature Requirements. A digital signature meeting the requirements of applicable law may satisfy any requirement for a signature under the governing documents of the Association. The Board of Directors of the Association may require reasonable verification of any electronic signature, document, record or instrument. Pending verification, the Board may refuse to accept any electronic signature, document, record or instrument that, in the Board's sole discretion, is not clearly authentic. Neither the Board nor the Association shall be liable to any Member or any other person for accepting or acting in reliance upon an electronic signature or electronic document that the Board reasonably believes to be authentic. Any Member or person who negligently, recklessly or intentionally submits any falsified electronic document or unauthorized signature shall fully indemnify the Association and Board for actual damages, reasonable attorneys' fees and expenses incurred as a result of such acts.
- (c) Electronic Funds Transfer. Payment of all sums to and from the Association and the Owners and occupants may be made by electronic transfer of funds creating a record evidencing the transaction for the period such record would be required to be available in non-electronic form.
- (d) Non-technology Alternatives. If any Owner, occupant or third party does not have the capability or desire to conduct business using electronic or other technological means, the Association shall make reasonable accommodation, at its expense, for such person to conduct business with the Association without use of such electronic or other means until such means have become generally (if not universally) accepted in similar communities in the area.

Article III
Board of Directors: Number, Powers, and Meetings

A. Composition and Selection.

3.1 Governing Body; Composition. A Board of Directors shall govern the affairs of the Association. Except as provided in Section 3.2, the directors must reside in the Community and shall be Members or spouses of such Members; however, no Person or his or her spouse may serve on the Board at the same time.

3.2 Directors Appointed by Declarant. Declarant shall have the right to appoint or remove any member or members of the Board or any officer or officers of the Association until such time as the first of the following events shall occur: (a) ten (10) years from the date the Declaration was Recorded; (b) the date on which one hundred (100%) of the Lots shall have been conveyed to Persons who have not purchased such Lots for the purpose of construction of a residence and resale such as builders and developers unless the Declarant has an unexpired option to annex additional property; or (c) the surrender by Declarant in writing of the authority to appoint and remove directors and officers of the Association. Each Owner, by acceptance of a deed to or other conveyance of a Lot, vests in Declarant such authority to appoint and remove directors and officers of the Association. The directors selected by Declarant need not be Owners or residents in the Community.

3.3 Number of Directors. The initial Board shall consist of those individual(s) designated in the Articles of the Association. Thereafter, the Board shall consist of three (3) Members. After Declarant's right to appoint directors and officers terminates, the Board may expand the number of directors to five (5) Members, and the directors shall be elected by a vote of the Members in accordance with Section 3.5(b).

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

3.5 Election and Term of Office. Member-elected directors shall be elected and hold office as follows:

- (a) After Declarant's right to appoint directors and officers terminates, the Association shall call a special meeting to be held at which Members shall elect three (3) directors.
- (b) Thereafter, directors shall be elected at the Association's annual meeting. All eligible Members of the Association may vote on all directors to be elected, and the candidate(s) receiving the most votes shall be elected.

At the special meeting in which the Members initially elect directors, two (2) directors shall be elected to two (2) year terms and one (1) director shall be elected to a one (1) year term. At the expiration of the initial term of office of each respective Member elected director, a successor shall be elected to serve for a term of two (2) years. The directors shall hold office until their respective successors shall have been elected by the Association.

3.6 Removal of Directors. At any regular or special meeting of the Association duly called, any one or more of the directors may be removed, with or without cause, by a majority of the Members eligible to vote, and a successor may then and there be elected to fill the vacancy thus created. A director whose removal has been proposed by the Members shall be given at least ten (10) days notice of the calling of the meeting and the purpose thereof and shall be given an opportunity to be heard at the meeting. Additionally, any director who has three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of an assessment for more than thirty (30) days may be removed by a majority vote of the remaining directors at a meeting. This Section shall not apply to directors appointed by Declarant.

3.7 Vacancies. Vacancies in the Board caused by any reason, excluding the removal of a director by vote of the Association, shall be filled by a vote of the majority of the remaining directors, even though less than a quorum, at any meeting of the Board. Each person so selected shall serve the unexpired portion of the term.

B. Meetings.

3.8 Organization Meetings. The first meeting of the Board following each annual meeting of the Membership shall be held within ten (10) days thereafter at such time and place as shall be fixed by the Board.

3.9 Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the directors, but at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter. Notice of the regular schedule shall constitute sufficient notice of such meetings.

3.10 Special Meetings. Special meetings of the Board shall be held when requested by the President, Vice President, or by any two (2) directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by one of the following methods: (a) by personal delivery; (b) by written notice by first class mail, postage prepaid; (c) by telephone communication, either directly to the director or to a Person at the director's home or office who would reasonably be expected to communicate such notice promptly to the director; (d) by electronic message, fiber optic, or telecommunication to the director; or (e) by commercial delivery service to such director's home or office. All such notices shall be given or sent to the director's address, telephone number, or other place of delivery as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, or telecommunication shall be given at least forty-eight (48) hours before the time set for the meeting.

3.11 Waiver of Notice. The transactions of any meeting of the Board, 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 given to

any director who attends the meeting without protesting about the lack of adequate notice before or at its commencement.

- 3.12 Quorum of Board of Directors. At all meetings of the Board, 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.
- 3.13 Compensation. No director shall receive any compensation from the Association for acting as such.
- 3.14 Open Meetings. All meetings of the Board shall be open to all Members, but Members other than directors may not participate in any discussion or deliberation unless expressly so authorized by the Board.
- 3.15 Executive Session. The Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.
- 3.16 Action Without A Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if one or more consents, in writing, setting forth the action so taken, shall be signed by a majority of the directors and delivered to the Association for inclusion in the minutes for filing in the corporate records.
- 3.17 Telephonic Participation. One or more directors may participate in and vote during any 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 so participating shall be present at such meeting. Any such meeting at which a quorum participates shall constitute a meeting of the Board.

C. Powers and Duties.

- 3.18 Powers. The Board shall be responsible for the affairs of the Association and shall have all of the powers necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by the Declaration, Articles, 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 shall have the power to and be responsible for the following, in way of explanation, but not limitation:
- (a) preparation and adoption of an annual budget in which there shall be established the contribution of each Owner to the Common Expenses;
 - (b) making assessments to defray the Common Expenses and establishing the means and methods of collecting such assessments;
 - (c) providing for the operation, care, upkeep, and maintenance of all areas that are the maintenance responsibility of the Association.
 - (d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and, where appropriate, providing for the compensation of such

personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;

- (e) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association;
- (f) making and amending use restrictions and rules and regulations;
- (g) opening of bank accounts on behalf of the Association and designating the signatories required;
- (h) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules and regulations adopted by it, and bring any proceedings which may be instituted on behalf of or against the Owners concerning the Association;
- (i) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;
- (j) paying the cost of all services rendered to the Association or its Members which are not directly chargeable to Owners;
- (k) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, and specifying the maintenance and repair expenses and any other expenses incurred; and
- (l) contracting with any Person for the performance of various duties and functions.

3.19 Management Agent. The Board may employ for the Association a professional management agent or agents at a compensation established by the Board to perform such duties and services as the Board shall authorize. Declarant or an affiliate of Declarant may be employed as managing agent or manager. The term of any management agreement shall not exceed one (1) year and shall be subject to termination by either party, without cause and without penalty, upon not more than ninety (90) days' written notice.

3.20 Borrowing. The Board shall have the power to borrow money without the approval of the Members of the Association, provided that the Board shall obtain Membership approval in the same manner as for special assessments, in the event that the proposed borrowing is for the purpose of modifying, improving, or adding amenities, or the total amount of such borrowing exceeds or would exceed Ten Thousand and no/100 Dollars (\$10,000.00) outstanding debt at any one time.

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

A. Notice. Written notice shall be served upon the violator by first-class or certified mail sent to the last address of the Member shown on the Association's records, specifying:

1. the nature of the violation, the fine, or suspension to be imposed and the date, not less than fifteen (15) days from the date of the notice, that the fine or suspension will take effect;
2. that the violator may, within ten (10) days from the date of the notice, request a hearing regarding the fine or suspension imposed;

3. the name, address, and telephone numbers of a representative of the Association whom the member may contact in order to challenge the fine or suspension;
 4. that any statements, evidence, and witnesses may be produced by the violator at the hearing; and
 5. that all rights to have the fine or suspension reconsidered are waived if a hearing is not requested within ten (10) days of the date of the notice.
- B. Hearing. If a hearing is requested, it shall be held before the Board in executive session, and the violator shall be given a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing. No fine or suspension shall be imposed prior to the date that is five (5) days after the date of the hearing.
- C. Enforcement. In any action or proceeding to enforce the Declaration, these Bylaws, the rules and regulations of the Association, or a decision of the Board, the Association shall be entitled to recover all expenses of enforcement from the violator, including all reasonable attorneys' fees actually incurred.

Article IV. **Officers**

- 4.1 Officers. The officers of the Association shall be a President, Secretary, and Treasurer. Any two (2) or more offices may be held by the same Person, excepting the offices of President and Secretary. The President and Treasurer shall be elected from among the Members of the Board. The Board may appoint such other officers, including one or more Vice Presidents, Assistant Secretaries, or Assistant Treasurers, as it shall deem desirable.
- 4.2 Election, Term of Office, and Vacancies. Except during the period in which Declarant has the right to appoint the officers of the Association under Section 3.2, the officers of the Association shall be elected annually by the Board at the first meeting of the Board following each annual meeting of the Members. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board for the unexpired portion of the term.
- 4.3 Removal. Any officer may be removed by the Board whenever, in its judgment, the best interest of the Association will be served thereby.
- 4.4 President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board. The President shall have all the general powers and duties that are incident to the office of the president of a corporation organized under the Georgia Nonprofit Corporation Code.
- 4.5 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.
- 4.6 Secretary. The Secretary will keep the minutes of all meetings of the Association and of the Board and shall have charge of such books and papers as the Board may direct and shall, in general, perform all duties incident to the office of the secretary of a corporation organized in accordance with Georgia law.

- 4.7 Treasurer. The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping the 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.
- 4.8 Resignation. Any officer may resign at any time by giving written notice to the Board. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Article V. **Committees**

Committees to perform such tasks and to serve for such periods as may be designated by the Board are hereby authorized. Each committee shall be composed and shall operate in accordance with the terms of the resolution of the Board designating the committee or with rules adopted by the Board.

Article VI. **Miscellaneous**

- 6.1 Fiscal Year. The fiscal year of the Association shall be the calendar year unless otherwise determined by resolution of the Board.
- 6.2 Parliamentary Rules. *Roberts Rules of Order* (current edition) shall govern the conduct of all Association proceedings, when not in conflict with Georgia law, the Articles of Incorporation, the Declaration, these Bylaws, or a ruling made by the person presiding over the proceeding.
- 6.3 Conflicts. If there are conflicts or inconsistencies between the provisions of Georgia law, the Articles of Incorporation, the Declaration, and these Bylaws, the provisions of Georgia law, the Declaration, the Articles of Incorporation and the Bylaws (in that order) shall prevail.
- 6.4 Amendment. These Bylaws may be amended by Declarant or the Board if such amendment is necessary: (a) to bring any provision hereof into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any title insurance company to issue title insurance coverage with respect to the Lots subject to the Declaration; (c) to meet the requirements of 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 such lender or purchaser to make or purchase Mortgage loans on the Lot subject to the Declaration; or (d) to enable any governmental agency or private insurance company to insure or guarantee Mortgage loans on the Lots subject to the Declaration. In addition, these Bylaws may be amended upon the affirmative vote or written consent, or any combination thereof, of Declarant, for so long as Declarant retains the right to appoint the

Board, and at least two-thirds (2/3) of the Members entitled to vote. Proposed amendments of the Bylaws shall be effective only upon Recording.

CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Magnolia Creek of Forsyth Subdivision, a Georgia corporation ("Association");

That the foregoing Bylaws constitute the original Bylaws of said Association, as duly adopted at a meeting of the Board of Directors thereof held on the 8 day of 1 2004.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 24 day of 3, 2004.

Leonard Colles (SEAL)
_____, Secretary

