



Doc ID: 001826370045 Type: GLR
Filed: 02/27/2007 at 08:54:00 AM
Fee Amt: \$98.00 Page 1 of 45
Douglas County Georgia
Cindy Chaffin Clerk Superior Court

BK **2523** PG **310-354**

en.
UPON RECORDING RETURN TO:
Laura C. Billue, Esq.
HARTLEY, ROWE & FOWLER, P.C.
6622 East Broad Street
P. O. Box 489
Douglasville, Georgia 30133-0489
(770) 920-2000
File No. 03764.1

**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS
FOR
KENSINGTON PARK**

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

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS
RESTRICTIONS AND EASEMENTS
FOR
KENSINGTON PARK

-TABLE OF CONTENTS-

Article 1	<u>Definitions</u>	1
1.1	"Association"	1
1.2	"Board of Directors" or "Board"	1
1.3	"Bylaws"	2
1.4	"Common Property"	2
1.5	"Declarant"	2
1.6	"Owner"	2
1.7	"Person"	2
1.8	"Supplementary Declaration"	2
Article 2	<u>Property Subject to This Declaration</u>	2
2.1	Property Hereby Subject to this Declaration.....	2
2.2	Unilateral Annexation by Declarant.....	2
2.3	Other Annexation	3
Article 3	<u>Association Membership and Voting Rights</u>	3
Article 4	<u>Assessments</u>	3
4.1	Purpose of Assessments	3
4.2	Creation of Lien and Personal Obligation for Assessments.....	4
4.3	General Assessments	4
4.4	Special Assessments.....	5
4.5	Specific Assessments	5
4.6	Subordination of Liens to Mortgages	5
4.7	Remedies of the Association	5
4.8	Date of Commencement of Assessments	6
4.9	Budget Deficits During Declarant Control.....	6
4.10	Failure to Assess.....	6
4.11	Initiation Fee.....	7

Article 5	<u>Maintenance; Common Property</u>	7
5.1	Association's Maintenance Responsibility	7
5.2	Owner's Maintenance Responsibility	7
5.3	Conveyance of Common Property by Declarant to Association; No Implied Rights	8
5.4	Partition	8
5.5	Condemnation	8
Article 6	<u>Architectural Standards</u>	8
6.1	Architectural Standards	8
6.2	Waiver	9
6.3	Enforcement	9
Article 7	<u>Use Restrictions and Rules</u>	9
7.1	Rules and Regulations	9
7.2	Residential Use.....	10
7.3	Signs	10
7.4	Vehicles; Parking	10
7.5	Animals and Pets	11
7.6	Nuisance	11
7.7	Unsightly or Unkempt Conditions	11
7.8	Garbage Cans	11
7.9	Antenna	12
7.10	Drainage	12
7.11	Sight Distance at Intersections	12
7.12	Tree Removal	12
7.13	Subdivision of Lots	12
7.14	Guns.....	12
7.15	Fences.....	12
7.16	Lighting	13
7.17	Swimming Pools.....	13
7.18	Mailboxes.....	13
7.19	Artificial Vegetation, Vegetable Gardens, Play Equipment and Pools.....	13
7.20	Clotheslines	13
7.21	Air-Conditioning Units.....	13
7.22	Entry Features.....	13
7.23	Undisturbed Buffer.....	13
7.24	Buffer Areas	13
Article 8	<u>Insurance and Casualty Losses</u>	14
8.1	Insurance on Common Property.....	14
8.2	Individual Insurance	14

8.3	Damage and Destruction - Insured by Owners	14
Article 9	<u>Mortgagee Provisions</u>	15
9.1	Notices of Action.....	15
9.2	Audit.....	15
9.3	No Priority.....	15
Article 10	<u>Easements</u>	15
10.1	Easement for Use and Enjoyment	15
10.2	Easement for Utilities.....	16
10.3	Easement for Maintenance	16
10.4	Easement for Entry Features and Streetscapes.....	17
10.5	Easement for Drainage	17
10.6	Easement During Construction and Sale Period	17
Article 11	<u>Use of Pool and Tennis Facilities</u>	18
Article 12	<u>General Provisions</u>	18
12.1	Enforcement	18
12.2	Occupants Bound	18
12.3	Self-Help	19
12.4	Duration.....	19
12.5	Termination of Rights of Declarant.....	19
12.6	Amendment	19
12.7	Gender and Grammar	20
12.8	Severability.....	20
12.9	Captions.....	20
12.10	No Merger	20
12.11	Preparer	20
12.12	Notices.....	20
12.13	Perpetuities	21
12.14	Indemnification	21
12.15	Variances.....	21

- EXHIBIT "A" PROPERTY DESCRIPTION
- EXHIBIT "B" ADDITIONAL PROPERTY WHICH MAY BE SUBMITTED
TO THIS DECLARATION
- EXHIBIT "C" BYLAWS OF KENSINGTON PARK HOMEOWNERS ASSOCIATION,
INC.

**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS**

FOR

KENSINGTON PARK HOMEOWNERS ASSOCIATION, INC.

THIS DECLARATION is made on the date hereinafter set forth by KENSINGTON PARK DEVELOPMENT, INC., a Georgia Corporation (hereinafter sometimes called "Declarant");

WITNESSETH

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

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

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

**ARTICLE 1
DEFINITIONS**

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

1.1 "Association" means Kensington Park Homeowners Association, Inc., a Georgia nonprofit corporation, its successors and assigns.

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

1.3 "Bylaws" means the Bylaws of Kensington Park Homeowners Association, Inc., attached to this Declaration as Exhibit "C" and incorporated herein by this reference as may be amended from time to time.

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

1.5 "Declarant" means Kensington Park Development, a Georgia Corporation, and its successors-in-title and assigns; provided that in a recorded instrument, such successor-in-title or assignee is designated as the Declarant hereunder. Upon the effective date of the designation of a successor Declarant, all rights of the former Declarant in and to such status as Declarant hereunder shall cease, it being understood that there shall be only one holder of the rights of Declarant hereunder at any one point in time.

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

1.7 "Person" includes any individual, individual acting in a fiduciary capacity, corporation, limited partnership, limited liability company, general partnership, joint stock company, joint venture, association, company or other organization, recognized as a separate legal entity under Georgia law.

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

ARTICLE 2 PROPERTY SUBJECT TO THIS DECLARATION

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

2.2 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 Seven (7) 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. Declarant intends to annex hereto the property contained in Declarant's land plan for the development as amended from time to time which property is a portion of the property described in Exhibit "B". However, inclusion of property on Declarant's

land plan or in Exhibit "B" shall not obligate the Declarant to subject such property to the Declaration, nor shall exclusion of property from the initial land plan bar Declarant from subjecting 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. 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.

2.3 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 for record in the county in which the property to be annexed is located a Supplementary Declaration describing the property being annexed. Any such Supplementary Declaration shall be 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 the filing for record of such Supplementary Declaration, unless a later effective date is provided therein.

ARTICLE 3 ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Every Person who is the record owner of a fee or undivided fee interest in any Lot that is subject to this Declaration shall have a membership in the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one membership per Lot. Membership shall be appurtenant to and may not be separated from ownership of a Lot. The rights and privileges of membership, including the right to hold office, may be exercised by a member or the spouse of a member, but in no event shall more than one office be held for each Lot owned. This Section is not intended to prohibit the same individual from being both an officer and a director of the Association. Nothing in this Section shall restrict the number of votes cast or the number of the officers and directors appointed by the Declarant. Members shall be entitled to one vote for each Lot owned. When more than one Person holds an ownership interest in a Lot, the vote for such Lot shall be exercised as those Owners themselves determine and advise the Secretary prior to any meeting or referendum. The vote attributable to a Lot shall be suspended in the event more than one Person seeks to exercise it.

ARTICLE 4 ASSESSMENTS

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

4.2 Creation of the Lien and Personal Obligation for Assessments. Each Owner of a Lot, by acceptance of a deed, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) general assessments; (b) special assessments; and (c) specific assessments. All such assessments, together with late charges and interest (at a rate set by the Board of Directors from time to time, but not to exceed the maximum rate permitted by law or (18%) per annum on the principal amount due), and costs of collection, including, without limitation, reasonable attorney's fees actually incurred, shall, from the time the sums become due and payable, be a charge on the land and shall be a continuing lien in favor of the Association on the Lot against which each assessment is made. The recording of this Declaration shall constitute record notice of the existence of the lien and no further recordation of any claim of lien shall be required. Each such assessment, together with such late charges, interest and costs, shall also be the personal obligation of the Person who was the Owner of the Lot at the time the assessment fell due. Each Owner shall be personally liable for the portion of each assessment coming due while the Owner of a Lot, and each grantee of an Owner shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of the grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings. No Owner may waive or otherwise exempt themselves from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot. No diminution or abatement of any assessment shall be claimed or allowed by reason of any failure of the Association to take some action or perform some function required to be taken or performed by the Association, the obligation to pay assessments being a separate and independent covenant on the part of each Owner. All payments shall be applied first to costs, then to late charges, then to interest and then to delinquent assessments.

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

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

4.5 Specific Assessments. The Board shall have the power to levy specific assessments as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. Fines levied pursuant to this Declaration and the costs of maintenance performed by the Association for which the Owner is responsible shall be specific assessments. The Board of Directors may also specifically assess Owners for Association expenses as follows: (a) expenses of the Association which benefit less than all of the Lots may be specifically assessed equitably among all of the Lots which are benefitted according to the benefit received; and (b) expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be assessed equitably among all Lots according to the benefit received.

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

4.7 Remedies of the Association. Any assessments or installments thereof which are not paid when due shall be delinquent. In addition to the lien rights, the personal obligation of the then Owner to pay such assessments shall remain such Owner's personal obligation and shall also pass to such Owner's successors-in-title. Such Owner shall nevertheless remain as fully obligated as before to pay to the Association any and all amounts which such Owner was obligated to pay immediately preceding the transfer; and such Owner and such successors-in-title shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such Owner and such successors-in-title creating any indemnification of the Owner or any relationship of principal and surety as between themselves. Any assessment or installment thereof delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may determine from time

to time. The Association may cause a notice of delinquency to be given to any Owner who has not paid within ten (10) days following the due date. In the event that the assessment remains unpaid after sixty (60) days, the Association may institute suit to collect such amounts and/or to foreclose its lien. The Association may file a notice of its claim of lien with the Office of the Clerk of Superior Court of the county where the Lot is located, but no such claim of lien shall be required to establish or perfect the lien for unpaid assessments. Each Owner, by acceptance of a deed vests in the Association the right and power to bring all actions against such Owner personally, for the collection of such charges as a debt or to foreclose the lien. The lien provided for in this Declaration shall be in favor of the Association and shall be for the benefit of all Owners. The Association shall have the power to bid on the Lot at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. The Association may also suspend the membership rights of the delinquent Owner, including the right to vote, the right of enjoyment in and to the Common Property and the right to receive and enjoy such servicing and other benefits as may then be provided by the Association. Any such suspension shall not affect such member's obligation to pay assessments coming due during the period of such suspension and shall not effect the permanent lien on such Lot in favor of the Association.

4.8 Date of Commencement of Assessments. Assessments shall commence when the Board of Directors first determines a budget and levies assessments. The assessments provided for herein shall commence as to a Lot on the first of the following to occur: (a) the date that the Lot is first occupied for residential purposes; or (b) the date that the Lot is conveyed by the Declarant to an Owner who is not an approved builder acquiring such Lot in the ordinary course of business or as successor Declarant. A Lot shall be occupied for residential purposes when it has been improved with a dwelling and has been conveyed to an Owner who intends to occupy the dwelling, or if the dwelling is occupied as a residence before such conveyance, the date of such occupancy. The annual general assessment for the first year shall be prorated based on the number of days remaining in the calendar year from the date of such conveyance.

4.9 Budget Deficits During Declarant Control. For so long as the Declarant has the authority to appoint the directors and officers of the Association, Declarant may (a) advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for capital reserves), and the sum of the annual, special and specific assessments collected by the Association in any fiscal year (such advances shall be evidenced by promissory notes from the Association in favor of the Declarant); or (b) cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for similar loans in the local area of the community. No Mortgage secured by the Common Property or any of the improvements maintained by the Association shall be given in connection with such loan.

4.10 Failure to Assess. The omission or failure of the Board to fix the assessment amounts or rates or to deliver or mail to each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

4.11 Initiation Fee. Upon the first sale of each and every Lot after it has been improved with a residence for which a certificate of occupancy has been issued, an initiation fee in the amount of \$200.00 shall be collected from the purchaser of such sale for the benefit of the Association. The aggregate fund established by such initiation fee shall be maintained in a segregated account, and shall be for the purpose of insuring that the Association will have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the Board.

ARTICLE 5 MAINTENANCE; COMMON PROPERTY

5.1 Association's Maintenance Responsibility. The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance; repair and replacement of all landscaping and improvements situated on the Common Property. The Association shall also maintain (whether or not constituting Common Property): (a) all entry features for the subdivision including entry area landscaping, any irrigation system and the expenses for water and electricity, if any, provided to such entry features; (b) landscaping originally installed by the Declarant, whether or not such landscaping is on a Lot, privately owned property or public right of way; (c) all storm water detention/retention ponds and storm water drainage facilities serving the subdivision, if and to the extent such facilities are not maintained by a public body; and (d) all Community recreational facilities. In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether within or outside the subdivision and to enter into easements and covenant to share costs agreements regarding such property where the Board has determined that such action would benefit the Owners. In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, or occupant, or the family, guests, lessees or invitees of an Owner or occupant, then the Association may perform such maintenance, repair or replacement and all costs thereof not paid for by insurance, shall be assessed against the Owner as a specific assessment.

5.2 Owner's Maintenance Responsibility. Except for maintenance performed on a Lot by the Association pursuant to Section 5.1, if any, all maintenance of the Lot and all structures, landscaping, and other improvements thereon shall be the sole responsibility of the Owner. Such maintenance obligation shall include, without limitation, the following: prompt removal of all litter, trash, refuse, and waste; lawn mowing on a regular basis; tree and shrub pruning; watering landscaped areas; keeping improvements, and exterior lighting in good repair and working order; keeping lawn and garden areas alive, free of weeds, and attractive; keeping driveways in good repair; complying with all governmental health and police requirements; maintenance of grading and storm water drainage as originally established on the Lot; and repair of exterior damages to improvements. In the event that the Board of Directors determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair or replacement of items for which such Owner is responsible hereunder, the Association shall, except in an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair or replacement deemed necessary. The Owner shall have ten days after receipt of such notice within which to complete such maintenance, repair or

replacement, or, in the event that such maintenance, repair or replacement is not capable of completion within a ten-day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair or replacement and all costs shall be assessed against the Owner and the Lot as a specific assessment.

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

5.4 Partition. The Common Property shall remain undivided and no Owner shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Community and without the written consent of all holders of all Mortgages encumbering any portion of the property, including, but not limited to, the Lots located within the Community.

5.5 Condemnation. In the event of a taking by eminent domain of any portion of the Common Property on which improvements have been constructed, the Association shall restore or replace such improvements so taken on the remaining Common Property, unless within 60 days after such taking, an alternative plan is approved by at least 75% of the Total Association Vote and the consent of Declarant. The provisions of this Declaration applicable to replacement or restoration of damaged improvements on the Common Property shall also apply to and govern the actions to be taken in the event that the improvements are not restored or replaced after a condemnation.

ARTICLE 6 ARCHITECTURAL STANDARDS

6.1 Architectural Standards. 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 the Declarant, or as is approved in accordance with this Section, or as is otherwise expressly permitted herein. No exterior construction, addition, erection, or alteration shall be made

unless and until plans and specifications showing at least the nature, kind, shape, height, materials, and location shall have been submitted in writing to and approved by the Declarant. Written design guidelines and procedures may be promulgated for the exercise of this review, which guidelines may provide for a review fee. Upon the expiration or surrender of the rights of Declarant under this Declaration the Board of Directors shall then and thereafter have authority to approve all plans and specifications under this Section. If submitted plans and specifications are not approved or disapproved within thirty (30) days after the plans and specifications have been submitted, approval will not be required, and this Section will be deemed to have been complied with fully. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint or redecorate the interior of structures on the Lot without approval hereunder. However, modifications to the interior of porches, patios and similar portions of a structure visible from the outside shall be subject to approval. This Article may not be amended without the written consent of the Declarant until (a) the Declarant no longer has the right to unilaterally annex additional property; and (b) each Lot has been improved with a dwelling for which a certificate of occupancy has been issued.

6.2 Waiver. The approval of the Declarant of any proposals or plans or drawings for any work done or proposed, or in connection with any other matter requiring the approval of the Declarant, shall not constitute a waiver of any right to withhold approval or consent as to any similar proposals or plans or drawings that are submitted.

6.3 Enforcement. Any structure or improvement placed or made in violation of this Article shall be considered to be nonconforming. Upon written request from the Declarant, Owners shall, at their own cost and expense, remove such nonconforming structure or improvement and restore the land to substantially the same condition as previously existed. Should an owner fail to remove and restore as required, the Declarant and its agents shall have the right to remove the nonconforming structure or improvement and restore the property to substantially the same condition as previously existed. All costs, including reasonable attorney's fees, may be assessed against the Lot as a specific assessment. Neither the Declarant, the Association nor the officers, directors, employees and agents of any of them shall be held liable for exercising the rights under this Article. In addition to any other remedies available to the Declarant, in the event of noncompliance with this Article, the Declarant may record in the appropriate land records a notice of violation under this Article naming the violating Owner. In addition, the Declarant shall have the authority and standing to pursue any and all remedies available at law and equity to enforce the provisions of this Article.

ARTICLE 7 USE RESTRICTIONS AND RULES

7.1 Rules and Regulations. The Board of Directors may, from time to time, with the consent of Declarant and without a vote of the members, promulgate, modify or delete rules and regulations applicable to the subdivision. Such rules and regulations shall be distributed to all Owners prior to the date that they are to become effective and shall thereafter be binding upon all Owners and occupants until and unless overruled, canceled or modified by a majority of the total association vote and the consent of Declarant.

7.2 Residential Use. Each Lot shall be used for residential purposes exclusively. Leasing of a Lot for residential occupancy shall not be considered a business or business activity. No trade or business of any kind may be conducted in or from a Lot, except that the Owner or occupant in residence at the Lot may conduct business activities within the house so long as the business activity: (a) does not otherwise violate the provisions of the Declaration or Bylaws; (b) is not apparent or detectable by sight, sound or smell from the exterior of the Lot; (c) does not unduly increase traffic flow or parking congestion; (d) conforms to all zoning requirements for the subdivision; (e) does not increase the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage; (f) is consistent with the residential character of the subdivision; (g) does not constitute a nuisance or a hazardous or offensive use; and (h) does not threaten the security or safety of other residents of the subdivision, all as may be determined in each case in the sole discretion of the Board of Directors. The Board may issue rules regarding permitted business activities.

7.3 Signs. No sign of any kind shall be erected within the subdivision without prior written approval under Article 6. Notwithstanding the foregoing, the Board and the Declarant shall have the right to erect reasonable and appropriate signs. For-sale signs and security signs and any signs required by legal proceedings may be erected upon any Lot. The provisions of this Section shall not apply to any Mortgagee in possession due to foreclosure of a first Mortgage or as grantee pursuant to any deed in lieu of such foreclosure. The Board may impose a fine of One Hundred and Fifty Dollars and No Cents (\$150.00) per day for display of any sign that is in violation of this section if it is not removed within twenty-four (24) hours after written demand is delivered to the Lot owner.

7.4 Vehicles; Parking. All parking of vehicles shall be subject to rules and regulations that the Board may adopt. The term "vehicles" as used herein shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, golf carts, trucks, campers, buses, vans and automobiles. Vehicles shall not be parked on any street or lawn within the community, unless there is a special event and approval has been obtained from the Board. Vehicles must be parked in the garage, driveway, or other areas designated by the Board. Garage doors shall be kept closed at all times, except for necessary work in and around the garage, ingress, and egress.

Vehicles which are not licensed or are in disrepair and incapable of being driven on the public highways may not be left in the subdivision for more than five (5) days, except in a garage or other area designated by the Board. After such five (5) day period, such vehicle may be removed from the subdivision by the Board of Directors.

No eighteen wheel trucks or the cabs of such trucks or trucks with a load capacity in excess of three-quarters of a ton shall be parked or stored within the Community except during the time reasonably necessary to provide service or delivery within the Community.

Any vehicle, towed vehicle, boat, personal watercraft, recreational vehicle, motor home, trailer, motorcycle, minibike, scooter, go-cart, golf cart, commercial truck, camper, bus or mobile home regularly stored in the Community or temporarily kept in the Community, except if kept in a garage or other area designated by the Board, for periods longer than 24 hours may be towed or booted by the Board of Directors after the required notice by law is given. (Trucks with mounted campers which are used as a primary means of transportation shall not be considered recreational

vehicles provided they are used on a regular basis for transportation, and the camper is stored out of public view upon removal.) However, if a vehicle is obstructing the flow of traffic, is parked in a fire lane, or is blocking another vehicle or access to a home, or creates a hazardous condition, the vehicle may be towed immediately.

If a vehicle is towed or booted, neither the Association nor any officer or agent of the Association shall be liable to any person for any claim of damage as a result of the vehicle being towed or booted. If a vehicle is removed or booted by the Declarant or the Board of Directors, any costs of removing or booting the vehicle shall be assessed against the Lot and/or the owner of the vehicle. Notwithstanding anything to the contrary herein, the Board of Directors may elect to impose fines or use other available sanctions, rather than exercise its authority to tow or boot a vehicle.

7.5 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. Reasonable rules and regulations for pets may be established by the Association in order to minimize damage and disturbance to other Owners. No exterior pens for pets may be constructed or maintained on any Lot unless approved in writing in accordance with Article 6 hereof.

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

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

7.8 Garbage Cans. All garbage cans shall be located or screened so as to be concealed from view from neighboring streets and property. All trash and garbage shall be regularly removed and shall not be allowed to accumulate.

7.9 Antenna. No exterior antenna, receiving dish or similar apparatus of any kind for receiving or transmitting of radio or video signals shall be placed, allowed or maintained upon any portion of the Community, including any Lot, unless approved in accordance with Article 6 hereof; provided, however, no such approval shall be necessary to install (a) antenna designed to receive direct broadcast satellite services, including direct-to-home satellite services, that are one meter or less in diameter; (b) antenna designed to receive video programming services via multi-point distribution services that are one meter or less in diameter or diagonal measurement; or (c) antenna designed and intended to receive television broadcast signals. Owners shall install permitted antenna or receiving dish only on the rear of the dwelling unless an acceptable quality signal cannot otherwise be obtained.

7.10 Drainage. Catch basins, retention ponds, detention ponds and drainage easement areas are for the purpose of controlling the natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner may obstruct or alter the drainage flows after location and installation of catch basins, retention ponds, detention ponds, drainage, storm sewers or storm drains without approval in accordance with the provisions of Article 6 hereof.

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

7.12 Tree Removal. Owners shall comply with any local ordinance and zoning condition that pertains to tree removal. In the event of any conflict between this section and any local ordinance or zoning condition, the more restrictive provision shall control.

No trees that are more than four (4) inches in diameter at a point twelve (12) inches above the ground and no ornamental or flowering trees, including but not limited to, cherry trees, apple trees, and dogwood trees shall be removed from a Lot without prior written approval in accordance with Article 6 hereof. This section shall not apply to the removal of trees by the Declarant, the Association or by an Approved Builder in connection with construction approved in accordance with Article 6 hereof.

7.13 Subdivision of Lots. No Lot shall be subdivided or its boundary lines changed except with the prior written approval in accordance with Article 6 hereof. Declarant, however, hereby expressly reserves the right to subdivide and/or revise and rerecord the subdivision plat of any Lot(s) with the consent of the Owner of the effected Lot(s) and to approve the revision and rerecording of any plat of any Lot(s) owned by any builder or developer, including, but not limited to, changing any Lot to Common Property or creating a public or private street over any Lot or property that was formerly a Lot, without the consent of any Person, other than the Owner(s) of such Lot(s).

7.14 Guns. The use of firearms in the subdivision is prohibited. The term "firearms" includes, without limitation, BB guns, pellet guns and firearms of all types.

7.15 Fences. No fence or fencing type barrier of any kind shall be placed, erected, allowed or maintained upon any Lot without prior written approval in accordance with the provisions of

Article 6 hereof. Guidelines detailing acceptable fence styles or specifications may be issued pursuant to Article 6. However, the Declarant and the Association may erect any type of fence on the Common Property or elsewhere within the subdivision as they may deem appropriate or as necessary to satisfy the requirements of any law, regulation or governmental entity or for the health and safety of Owners and occupants.

7.16 Lighting. Exterior lighting on any Lot visible from the street shall not be permitted, except for: (a) approved lighting as originally installed on a Lot; (b) one decorative light post; (c) street lights in conformity with an established street lighting program for the subdivision; (d) seasonal decorative lights; (e) front house illumination of model homes; or (f) other lighting approved under and pursuant to Article 6 hereof.

7.17 Swimming Pools. No swimming pool shall be constructed, erected or maintained upon any Lot without prior written approval in accordance with Article 6 hereof. Above-ground pools are not permitted.

7.18 Mailboxes. All mailboxes serving Lots shall be approved in accordance with Article 6. Identical replacement mailboxes may be installed without further approval; but no modification to or change in mailboxes may be made unless approved in accordance with Article 6 hereof.

7.19 Artificial Vegetation, Vegetable Gardens, Play Equipment and Pools. No artificial vegetation shall be permitted on the exterior of any property. No vegetable garden, hammock, statuary, play equipment (including, without limitation, basketball goals) exterior sculpture, fountains, flags, water features or pool to be erected on any Lot may be located other than between the rear dwelling line and the rear lot line, without the prior written approval in accordance with Article 6 hereof. Guidelines for basketball goals or other outdoor equipment may be established by the Board of Directors and no further approval shall then be necessary to install such equipment in accordance with such guidelines.

7.20 Clotheslines. No exterior clotheslines of any type shall be permitted.

7.21 Air-Conditioning Units. No window air-conditioning units may be installed.

7.22 Entry Features. Owners shall not alter, remove or add improvements to any entry features constructed by the Declarant on any lot, or any part of any easement area associated therewith without prior written approval in accordance with Article 6 hereof.

7.23 Undisturbed Buffer. Land-disturbing activities shall not be conducted within one hundred (100) feet of any stream in the Community, as measured from the point where vegetation has been wrested by normal stream flow, except with prior written approval under Article 6 hereof, and in compliance with Georgia law, including without limitation, the Control of Erosion and Sedimentation Act, O.C.G.A. §12-7-1, et seq., as amended from time to time.

7.24 Buffer Areas. A Lot or Common Property may contain buffer areas or no access easements as shown on the recorded subdivision plat. Owners shall not disturb the buffer area in any

way, including, without limitation, the construction of any improvements in the buffer area, landscaping, or cutting of trees, bushes or other vegetation.

**ARTICLE 8
INSURANCE AND CASUALTY LOSSES**

8.1 Insurance on Common Property. The Association shall obtain the insurance coverage necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the U.S. Department of Veterans Affairs, and the U.S. Department of Housing and Urban Development, as applicable to the subdivision. Accordingly, the Board of Directors shall obtain casualty insurance for all insurable improvements, whether or not located on the Common Property, which the Association is obligated to maintain. This insurance shall provide, at a minimum, fire and extended coverage and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The Board of Directors shall obtain a public liability policy applicable to the Common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least One Million (\$1,000,000.00) Dollars. Policies may contain a reasonable deductible as determined by the Board of Directors. In addition to the other insurance required by this Section, the Board of Directors shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on directors, officers, employees and other persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall cover the maximum funds that will be in the custody of the Association or its management agent at any time while the policy is in force, or any lesser amount of fidelity coverage allowable under the applicable Fannie Mae guidelines. Fidelity coverage shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation. All such insurance coverage shall be written in the name of the Association.

8.2 Individual Insurance. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner acknowledges that the Association has no obligation to provide any insurance for any portion of individual Lots and each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry all risk casualty insurance on the Lot and all structures constructed thereon and a liability policy covering damage or injury occurring on a Lot. The casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an all risk policy, if reasonably available and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The policies required hereunder shall be in effect at all times.

8.3 Damage and Destruction - Insured by Owners. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner thereof within seventy-five (75) days after such damage or destruction or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. Alternatively, the Owner may elect to demolish all improvements on the Lot and remove all debris therefrom within seventy-five (75) days after such damage or destruction.

**ARTICLE 9
MORTGAGEE PROVISIONS**

9.1 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number, therefore becoming an "eligible holder"), will be entitled to timely written notice of: (a) any condemnation loss or any casualty loss which affects a material portion of the subdivision or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such eligible holder; (b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by the Owner of the encumbered Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days; and (c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

9.2 Audit. 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 of the Association within 90 days of the date of the request.

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

**ARTICLE 10
EASEMENTS**

10.1 Easement for Use and Enjoyment. Every Owner shall have a right and easement of ingress and egress, use and enjoyment by the Owner and the occupants of the Owner's Lot in and to the Common Property which shall be appurtenant to and shall pass with the title to each Lot, subject to the following:

(a) the right of the Association to charge reasonable admission and other fees for the use of any Community recreational facilities; to limit the number of persons who may use the Community recreational facilities, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by authorized users and their guests and invitees;

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

(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, upon the affirmative vote of the Owners of at least two-thirds of the Lots (other than Declarant) and the consent of Declarant, to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property; provided, however, the lien and encumbrance of any such Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant or any Owner or the holder of any Mortgage encumbering any Lot or other property located within the subdivision (Regardless of any contrary provision in this Declaration or in any such Mortgage given by the Association, the exercise of any rights by the holder of such Mortgage 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 Owner or the holder of any Mortgage encumbering any Lot or other property located within the subdivision.);

(d) the right of the Association, acting through the Board of Directors and without a vote of the members, to dedicate or grant licenses, permits, easements and rights-of-way over, under and through the Common Property;

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

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

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

10.2 Easement for Utilities. There is hereby reserved to the Declarant and granted to the Association a blanket easement upon, across, above and under all property within the subdivision for access, ingress, egress, installation, alteration, repairing, replacing, and maintaining all utilities serving the subdivision or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system, or security system which the Declarant or the Association might decide to have installed to serve the subdivision. Declarant, the Association or the designee of either, as the case may be, may alter drainage and water flow, install, repair, replace and maintain or authorize the installation, repairing, replacing and maintaining of such wires, conduits, cables and other equipment related to the providing of any utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Declarant or the Board shall have the right to grant such easement.

10.3 Easement for Maintenance. Declarant hereby grants to the Association a perpetual easement across the exterior portions of all Lots as may be reasonably necessary for the maintenance

required hereunder. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment to Lots, reasonable steps shall be taken to protect such property and damage shall be repaired by the Association or its contractors at their sole expense.

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

10.5 Easement for Drainage. There is hereby reserved to the Declarant and granted to the Association an easement for creating and maintaining satisfactory drainage across Lots in the subdivision, over and across an area five (5) feet wide along each side Lot line, five (5) feet wide along each front Lot line, and five (5) feet wide along each rear Lot line in addition to any drainage easements shown on the recorded subdivision plat. However, such easement area shall not include any portion of a Lot upon which the foundation of a dwelling is located. Also reserved to the Declarant and granted to the Association is an easement for creating and maintaining satisfactory drainage across an area ten (10) feet each side of the centerline of all creeks and natural ditches and any additional drainage easements shown on the recorded subdivision plat.

10.6 Easement During Construction and Sale Period. Notwithstanding any provisions now or hereafter contained in this Declaration, the Bylaws, Articles of Incorporation of the Association, use restrictions, rules and regulations, architectural guidelines, and amendments thereto, Declarant reserves an easement across the subdivision for Declarant and any builder approved by Declarant to maintain and carry on, upon such portion of the subdivision as Declarant may reasonably deem necessary, such facilities and activities as in the sole opinion of Declarant may be required or convenient for Declarant's and such builder's development, construction and sales activities related to property hereby and hereafter subjected to this Declaration or nearby property being developed by Declarant or such builders, including, but not limited to: the right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in the subdivision, including, without limitation, any Lot; the right to tie into any portion of the subdivision with streets, driveways, paths, parking areas and walkways; the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, cable television, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the subdivision; the right to grant easements over, under, in or on the subdivision, including without limitation the Lots, for the benefit of neighboring properties for the purpose of tying into and/or otherwise connecting and using sewer and drainage lines and facilities constructed or installed in, on, under and/or over the subdivision; the right to convert Lots (with the consent of the Owner thereof) to Common Property and/or streets; the right to construct recreational facilities, utilities and other improvements on Common Property; the right to carry on sales and promotional activities in the subdivision; and the right to construct and operate business offices, signs, construction trailers, model residences and sales offices. Declarant and any such builder may use

2523 0332

residences, offices or other buildings owned or leased by Declarant or such builder as model residences and sales offices. This Section shall not be amended without the Declarant's written consent until the Declarant's rights hereunder have terminated as herein provided.

ARTICLE 11 USE OF POOL AND TENNIS FACILITIES

Use of Recreational Facilities. The residents of the Community shall have the right to use all Community recreational amenities and related facilities. Such use shall be subject to rules adopted by the Board of Directors and the payment of the assessments. Declarant shall not be liable for and is hereby held harmless from any personal injury or property damage caused by using the pool or tennis facilities.

The rights granted under this Article for use of the pool shall be subject to any applicable limitations on bathing load or other limitations on capacity as may be established by any applicable law, ordinance, rule or regulation. The Board of Directors shall have the right to create and enforce rules and restrictions for the health, welfare and safety of the Community.

ARTICLE 12 GENERAL PROVISIONS

12.1 Enforcement. Each Owner and occupant shall comply strictly with the Bylaws, rules and regulations and use restrictions, as amended or modified from time to time, and with the covenants, conditions, easements and restrictions set forth in this Declaration, the recorded subdivision plats for the subdivision and in the deed to such Owner's Lot, if any. The Board of Directors may impose fines or other sanctions for violations of the foregoing, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the Bylaws or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Association, the Declarant or an aggrieved Owner. Failure by the Declarant, the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Association shall have the right to record in the appropriate land records a notice of violation of the Declaration, Bylaws, rules and regulations, use restrictions or design guidelines and to assess the cost of recording and removing such notice against the Lot of the Owner who is responsible (or whose occupants are responsible) for the violation.

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

12.3 Self Help. In addition to any other remedies provided for herein, the Association, the Declarant, or their respective duly authorized agents shall have the power to enter upon any Lot or any other portion of the subdivision to abate or remove any structure, thing or condition which violates this Declaration, the Bylaws, the rules and regulations or the use restrictions. Unless an emergency situation exists, the violating Owner shall be given ten (10) days written notice of the intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after giving any notice required by law. All costs of self-help, including, without limitation, reasonable attorney's fees actually incurred, shall be assessed against the violating Owner as a specific assessment.

12.4 Duration. The covenants, conditions, restrictions and easements contained in this Declaration shall run with and bind the subdivision, 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 applicable law, if less), unless a written instrument signed by the then Owners of at least two-thirds (2/3) of the Lots has been recorded within the year immediately preceding the beginning of a twenty (20) year renewal period agreeing to change such provisions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated to the extent specified therein; or (b) extended, renewed, modified or terminated as otherwise provided herein or by applicable law.

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

12.6 Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, without limitation, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or private insurance company, including, without limitation, the U.S. Department of Housing and Urban Development and the U.S. Department of Veterans Affairs, to insure or guarantee Mortgage loans on the Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Lot unless the Owner of such Lot consents thereto in writing. Further, Declarant may unilaterally amend this

Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owners hereunder nor shall it adversely affect title to any Lot without the consent of the affected Owner. In addition to the above, this Declaration may be amended upon the affirmative vote or written consent of at least two-thirds of the Owners and the consent of Declarant. Amendments to this Declaration shall become effective upon recordation unless a later effective date is specified therein. The consent of the Declarant to any amendment shall be evidenced by the execution of said amendment by Declarant. The consent of the requisite number of Owners to any amendment shall be evidenced by the execution of the amendment by said Owners, or, in the alternative, the sworn statement of the President or any Vice President or the Secretary of the Association attached to or incorporated in the amendment, which sworn statement states unequivocally that the consent of the required number of Owners was obtained and that any notices required by this Declaration, the Bylaws, the Articles of Incorporation of the Association and Georgia law were given.

The Board of Directors, with the written consent of the Declarant, and without a vote of the members may amend this Declaration for the sole purpose of electing to be governed by the provisions of the Georgia Property Owner's Association Act, O.C.G.A. Section 44-3-220, et seq.

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

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

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

12.10 No Merger. There shall be no merger of any of the covenants, conditions, restrictions or easements created or reserved hereby with the fee estate of Declarant, by reason of the fact that Declarant may own or hold the estate or interest both encumbered and benefitted by such covenants, conditions, restrictions or easements and no such merger shall occur unless and until Declarant, while owning all of the estate or interests shall execute a written statement or instrument affecting such merger and shall duly record the same.

12.11 Preparer. This Declaration was prepared by Laura C. Billue, Hartley, Rowe & Fowler, P.C., 6622 East Broad Street, P. O. Box 489, Douglasville, Georgia 30133-0489.

12.12 Notices. Notices provided for in this Declaration or the Articles or Bylaws shall be in writing, and shall be addressed to any Owner at the address of the Lot and to the Declarant or the

2523 0335

Association at the address of their respective registered agent in the State of Georgia. Any Owner may designate a different address for notices by giving written notice to the Association. Notices addressed as above shall be deemed delivered three business days after mailing by United States Registered or Certified Mail, postpaid, or upon delivery when delivered in person, including delivery by Federal Express or other reputable courier service. Rejection or refusal to accept the notice, or the inability to deliver because of a change of address of which no notice was given, shall be deemed to be receipt of notice sent.

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

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

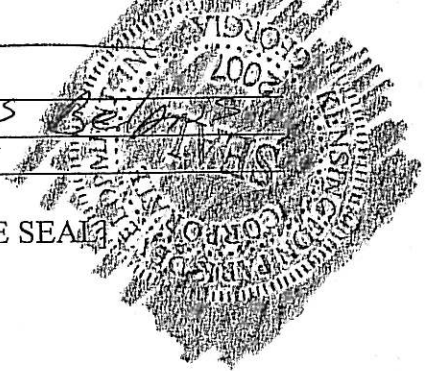
12.15 Variances. Notwithstanding anything to the contrary contained herein, the Board of Directors shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto, if it determines that waiver of application or enforcement of the provision in a particular case is warranted and would not be inconsistent with the overall scheme of development for the subdivision.

(SIGNATURE ON FOLLOWING PAGE)

IN WITNESS WHEREOF, the Declarant herein hereby executes this instrument under seal,
this 16th day of January, 2007.

DECLARANT:

KENSINGTON PARK DEVELOPMENT, INC.

By: [Signature]
Printed Name: R. CHARIS BELTON
Title: PRESIDENT
[AFFIX CORPORATE SEAL] 

Signed, sealed, and delivered
in the presence of:

[Signature: Laura L. Coast]
WITNESS

[Signature]
NOTARY PUBLIC
My Commission Expires:

[AFFIX SEAL]



IN WITNESS WHEREOF, the undersigned Owner of some or all of the tract or parcel of land described in Exhibit "A" attached hereto does hereby declare and consent, on behalf of such Owner and such Owner's heirs, successors, legal representatives, successors-in-title and assigns, that from and after the date hereof the property of Owner described in Exhibit "A" attached hereto shall be owned, held, transferred, sold, conveyed, used, occupied, and encumbered subject to all terms, provisions, covenants, restrictions and easements contained in the Declaration.

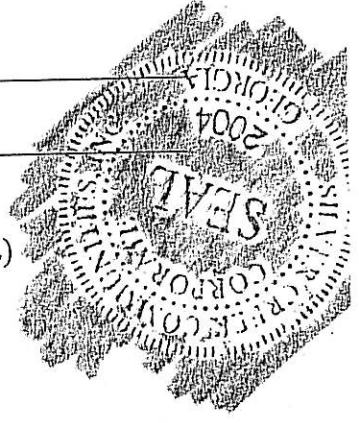
This 18th day of January, 2007.

Owner: **SILVER CREEK COMMUNITIES, INC.**

By: [Signature]

Title: president
STEVEN KIP TAYLOR

(AFFIX CORPORATE SEAL)



Signed, sealed and delivered
in the presence of:

[Signature]
WITNESS

[Signature]
NOTARY PUBLIC

My Commission Expires:

[AFFIX NOTARY SEAL]



IN WITNESS WHEREOF, the undersigned Owner of some or all of the tract or parcel of land described in Exhibit "A" attached hereto does hereby declare and consent, on behalf of such Owner and such Owner's heirs, successors, legal representatives, successors-in-title and assigns, that from and after the date hereof the property of Owner described in Exhibit "A" attached hereto shall be owned, held, transferred, sold, conveyed, used, occupied, and encumbered subject to all terms, provisions, covenants, restrictions and easements contained in the Declaration.

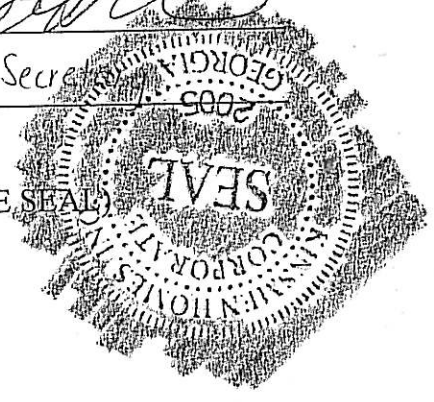
This 19th day of January, 2007.

Owner: KINSMEN HOMES, INC.

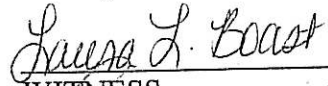
By: 


Title: Curt M. Boatright, Secretary

(AFFIX CORPORATE SEAL)



Signed, sealed and delivered in the presence of:


WITNESS


NOTARY PUBLIC

My Commission Expires:

[AFFIX NOTARY SEAL]



EXHIBIT "A"

Property Description

ALL THAT TRACT or parcel of land lying and being in Land Lots 758, 759, 760, and 808 of the 18th District and 2nd Section of Douglas County, Georgia, and being shown on a Final Plat of Survey for Kensington Park, Unit One, dated November 16, 2006, prepared by Adam T. Pearson, Georgia Registered Land Surveyor Number 2993, which plat of survey is filed of record in Plat Book 35, Pages 4 through 11, Douglas County, Georgia Records, which plat of survey by reference thereto is incorporated in this description.

LESS AND EXCEPT THE FOLLOWING DESCRIBED PROPERTY:

ALL THAT TRACT or parcel of land lying and being in Land Lot 760 of the 18th District and 2nd Section of Douglas County, Georgia, and being designated as the "Commercial Tract containing 9.846 acres" zoned C-G, as shown on the final plat of survey for Kensington Park, Unit One, dated November 16, 2006, prepared by Adam T. Pearson, Georgia Registered Land Surveyor Number 2993, which plat of survey is filed of record in Plat Book 35, Pages 4 through 11, Douglas County, Georgia Records, which plat of survey by reference thereto is incorporated in this description.

LESS AND EXCEPT THE FOLLOWING DESCRIBED PROEPRTY:

ALL THAT TRACT or parcel of land lying and being in Land Lot 808 of the 18th District and 2nd Section of Douglas County, Georgia, and being designated as the "Area South of Creek containing 16.4± acres" as shown on a final plat of survey for Kensington Park, Unit One, dated November 16, 2006, prepared by Adam T. Pearson, Georgia Registered Land Surveyor Number 2993, which plat of survey is filed of record in Plat Book 35, Pages 4 through 11, Douglas County, Georgia Records, which plat of survey by reference thereto is incorporated in this description.

BK PG
2523 0340

EXHIBIT "B"

**Additional Property Which May Unilaterally
Be Submitted To This Declaration by Declarant**

ALL THAT TRACT or parcel of land lying and being in Land Lots 756, 757, 758, 759, 760, 808, 809, 810, 811 and 812 of the 18th District and 2nd Section of Douglas County, Georgia.

BK PG
2523 0341

EXHIBIT "C"

BYLAWS OF KENSINGTON PARK HOMEOWNERS ASSOCIATION, INC.

BK PG
2523 0342

BYLAWS
OF
KENSINGTON PARK HOMEOWNERS ASSOCIATION, INC.

Prepared by:
Laura C. Billue, Esq.
HARTLEY, ROWE & FOWLER, P.C.
6622 E. Broad Street
P. O. Box 489
Douglasville, Georgia 30133-0489
(770) 920-2000

BYLAWS
OF
KENSINGTON PARK HOMEOWNERS ASSOCIATION, INC.
-TABLE OF CONTENTS-

Article 1	<u>Name, Membership, Applicability and Definitions</u>	1
1.1	Name	1
1.2	Membership.....	1
1.3	Definitions	1
Article 2	<u>Association: Meetings, Quorum, Voting, Proxies</u>	1
2.1.	Place of Meetings	1
2.2	Annual Meetings	1
2.3	Special Meetings	1
2.4	Record Date.....	2
2.5	Notice of Meetings	2
2.6	Waiver of Notice	2
2.7	Adjournment of Meetings	2
2.8	Membership List.....	2
2.9	Voting.....	3
2.10	Proxies.....	3
2.11	Quorum.....	3
2.12	Action Without a Formal Meeting	3
2.13	Action by Written Ballot	3
Article 3	<u>Board of Directors: Number, Powers, Meetings</u>	4
3.1	Governing Body; Composition	4
3.2	Directors Appointed by Declarant.....	4
3.3	Number of Directors.....	4
3.4	Nomination of Directors.....	4
3.5	Election and Term of Office.....	4
3.6	Removal of Directors	5
3.7	Vacancies.....	5
3.8	Organization Meetings	5
3.9	Regular Meetings	5
3.10	Special Meetings	5

3.11	Waiver of Notice	6
3.12	Quorum of Board of Directors	6
3.13	Compensation.....	6
3.14	Open Meetings	6
3.15	Executive Session.....	6
3.16	Action Without a Formal Meeting	6
3.17	Telephonic Participation.....	6
3.18	Powers	6
3.19	Management Agent	7
3.20	Borrowing.....	8
3.21	Fining Procedure	8
Article 4	<u>Officers</u>	8
4.1	Officers	8
4.2	Election, Term of Office, and Vacancies	9
4.3	Additional Officers and Agents.....	9
4.4	Salaries	9
4.5	Removal.....	9
4.6	President	9
4.7	Vice President.....	9
4.8	Secretary	9
4.9	Treasurer.....	9
4.10	Resignation.....	10
Article 5	<u>Committees</u>	10
Article 6	<u>Miscellaneous</u>	10
6.1	Fiscal Year.....	10
6.2	Parliamentary Rules	10
6.3	Conflicts	10
6.4	Amendment	10

BYLAWS
OF
KENSINGTON PARK HOMEOWNERS ASSOCIATION, INC.

Article 1

Name, Membership, Applicability and Definitions

1.1 Name. The name of the corporation shall be Kensington Park Homeowners Association, Inc. (hereinafter sometimes referred to as the "Association")

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

1.3 Definitions. The capitalized terms used in these Bylaws shall have the same meaning as set forth in the Declaration.

Article 2

Association: Meetings, Quorum, Voting, Proxies

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

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

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

2.4 Record Date. The Board of Directors shall fix in advance a record date for a determination of members entitled to notice of and to vote at any meeting of members or any adjournment thereof, or to make a determination of members for any other purpose, such date to be

not more than seventy (70) days before the date on which the particular action requiring such determination of members is to be taken.

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

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

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

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

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

2.10 Proxies. At all meetings of members, each member may vote in person or by proxy. All proxy appointment forms shall be in writing, dated, and filed with the Secretary before the

appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon: (a) receipt of notice by the Secretary of the death or judicially declared incompetence of a member; (b) receipt by the Secretary of written revocation signed by the member; (c) receipt by the Secretary of a subsequent appointment form signed by the member; (d) attendance by the member and voting in person at any meeting; or (e) the expiration of 11 months from the date of the proxy appointment form.

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

2.12 Action Without A Formal Meeting. Any action required or permitted to be approved by the members may be approved without a meeting if one or more consents, in writing, setting forth the action so taken, shall be signed and dated by members (including the Declarant, if the consent of the Declarant is required) holding the voting power required to pass such action at a meeting held on the record date for such action. The record date for such action shall be the date that the first member signs a consent. Such action shall be approved when the Secretary receives a sufficient number of such consents dated within 70 days of the record date for such action. If less than unanimous consent is obtained, the approval shall be effective ten (10) days after the Secretary gives written notice of the approval to all members who did not sign a consent. Each signed consent shall be included in the minutes of the meetings of members filed in the permanent records of the Association.

2.13 Action by Written Ballot. Any action that may be taken at any annual, regular or special meeting of members may be taken without a meeting if approved by written ballot as provided herein. The Association shall deliver a written ballot to each member entitled to vote on the matter. The written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. All solicitations for votes by written ballot shall indicate the number of responses needed to meet the quorum requirements; state the percentage of approvals necessary to approve each matter other than election of directors; and specify the time by which a ballot must be received by the Association in order to be counted. A timely written ballot received by the Association may not be revoked. Approval by written ballot of an action shall only be valid when the number of votes cast by ballots equals or exceeds the quorum required to be present at a meeting held to authorize such action and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. The results of each action by written ballot shall be certified by the Secretary and shall be included in the minutes of members filed in the permanent records of the Association.

Article 3
Board of Directors: Number, Powers, Meetings

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

3.2 Directors Appointed by Declarant. The Declarant shall have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association until such time as the first of the following events shall occur: (a) the expiration of seven (7) years after the date of the recording of the Declaration; (b) the date on which one hundred (100%) percent of the Lots planned by Declarant to be a part of the community shall have been improved with a dwelling and conveyed to an Owner for occupancy as a residence; or (c) the surrender of Declarant in writing of the authority to appoint and remove directors and officers of the Association. The directors appointed by the Declarant need not be Owners or residents of the community. The total number of Lots planned by Declarant for the community shall initially be the number of Lots shown on the Declarant's land use plan for the development as it may be amended from time to time. Inclusion of property on the land use plan shall not obligate the Declarant to subject such property to the Declaration, nor shall exclusion of property from the initial land use bar Declarant from subjecting such property to the Declaration. The final number of Lots planned for the community shall be the actual number of Lots shown on the recorded subdivision plats for the community regardless of any different number of Lots shown from time to time on the land use plan. The Declarant shall notify the Association when the final subdivision plat for the community has been recorded.

3.3 Number of Directors. While the Declarant has the right to appoint and remove officers and directors of the Association as provided above, the Board of Directors shall consist of one (1) to three (3) members as determined in writing by the Declarant. Thereafter, the Board may fix the number of directors or change the variable range for the size of the Board of Directors by setting a different minimum and maximum number of directors.

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

3.5 Election and Term of Office. After the Declarant's right to appoint directors and officers terminates, the Association shall call a special meeting (or take action under Section 2.12 or Section 2.13 in lieu of a meeting) and the members shall elect the directors. The members of the Board of Directors shall hold office for one year and shall continue in office until their respective successors shall have been elected and take office. At annual meetings of the membership thereafter (or

pursuant to Section 2.12 or Section 2.13 in lieu of a meeting), directors shall be elected. The candidates receiving the most votes shall be elected.

3.6 Removal of Directors. At any annual, regular or special meeting of the Association, any one or more of the members of the Board of Directors elected by the members may be removed, with or without cause, by a majority of the total association vote and a successor may then and there be elected to fill the vacancy thus created. The notice of the meeting shall state that the purpose, or one of the purposes, of the meeting is removal of a director. A director whose removal by the members has been proposed shall be given an opportunity to be heard at the meeting. Additionally, any director who has three consecutive unexcused absences from Board meetings or who is delinquent in the payment of an assessment for more than thirty (30) days may be removed by a majority vote of the remaining directors.

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

3.8 Organization Meetings. The first meeting of a newly elected Board of Directors shall be held within ten (10) days after the election at such time and place as the directors may conveniently assemble.

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

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

3.11 Waiver of Notice. The business transacted at any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if (a) a quorum is present, and (b) either before or after the meeting, each of the directors not present signs a written waiver of notice, a consent to hold the meeting, or an approval of the minutes which is included in the minutes filed with the official

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

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

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

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

3.15 Executive Session. The Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

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

3.17 Telephonic Participation. One or more directors may participate in and vote during any meeting of the Board by telephone conference call or any other means of communication by which all directors participating may simultaneously hear each other during the meeting. Any such meeting at which quorum participates shall constitute a meeting of the Board.

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

(a) preparation and adoption of an annual budget in which there shall be established the contribution of each member to the common expenses;

(b) making assessments to defray the common expenses and establishing the means and methods of collecting such assessments;

(c) providing for the operation, care, upkeep, and maintenance of all areas which are the maintenance responsibility of the Association;

(d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;

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

(f) making and amending rules and regulations;

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

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

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

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

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

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

3.20 Borrowing. The Board of Directors shall have the power to borrow money without the approval of the members of the Association; provided, however, except as otherwise provided in the Declaration, the Board shall obtain membership approval in the same manner as for special assessments, in the event that the total amount of such borrowing exceeds or would exceed ten percent (10%) of the annual budget of the Association.

3.21 Fining Procedure. The Board shall not impose a fine (a late charge shall not constitute a fine) unless and until the following procedure is followed:

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

(1) the nature of the violation, the fine to be imposed and the date that the fine will take effect which shall not be less than ten (10) days from the date of the notice, except for an unapproved sign violation, in which the fine will take effect twenty-four (24) hours from the date of the notice;

(2) that the violator may, within ten (10) days from the date of notice, request a hearing regarding the fine imposed;

(3) the name, address and telephone numbers of a person to contact to request a hearing;

(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 reconsidered are waived if a hearing is not requested within ten (10) days 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. Except for a sign violation, a fine shall be effective on the date that the decision is made by the Board at the conclusion of the hearing or at a later date that is determined by the Board.

Article 4 Officers

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

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

4.3 Additional Officers and Agents. The Board of Directors may appoint such other officers, including vice presidents, assistant secretaries and assistant treasurers, and agents as it shall deem necessary. Such officers and agents shall hold their respective offices for such terms and shall

exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors.

4.4 Salaries. The officers shall receive no compensation.

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

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

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

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

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

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

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

Article 5
Committees

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

Article 6
Miscellaneous

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

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

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

6.4 Amendment. These Bylaws may be amended by the Board of Directors with the consent of the Declarant if such amendment is necessary to (a) bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) enable any title insurance company to issue title insurance coverage with respect to the Lots subject to the Declaration; (c) enable an institutional or governmental lender or purchaser of mortgage loans, including, without limitation, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make or purchase mortgage loans on the Lots subject to the Declaration; (d) enable any governmental agency or private insurance company to insure or guarantee mortgage loans on the Lots subject to the Declaration; or (e) comply with the provisions of the Georgia Property Owners Association Act, O.C.G.A. §44-3-220, et seq. In addition, these Bylaws may be amended upon the affirmative vote of at least two-thirds (2/3) of the total association vote and the consent of Declarant.