



HICKORY

SPRINGS

AN ARVIDA COMMUNITY

DECLARATION
OF COVENANTS, RESTRICTIONS AND EASEMENTS
FOR HICKORY SPRINGS

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Jay C. Stephenson

COBB SUPERIOR COURT CLERK

DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS
FOR HICKORY SPRINGS ®

RECORDED AT DEED BOOK 10612, PAGE 001

COBB COUNTY, GEORGIA RECORDS

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DECLARATION
OF COVENANTS, RESTRICTIONS AND EASEMENTS
FOR Hickory Springs ®

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR HICKORY SPRINGS is made this 20th day of August, 1997, by ARVIDA - HICKORY SPRINGS PARTNERS, LIMITED PARTNERSHIP (hereinafter referred to as "Declarant").

BACKGROUND STATEMENT

Declarant is the owner of certain real property in Cobb County, Georgia, which is more particularly described on Exhibit A attached hereto and made a part hereof.

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

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

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

ARTICLE I
DEFINITIONS

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

1.01 Association. "Association" means Hickory Springs Homeowners' Association, Inc. (a non-profit, nonstock, membership corporation organized under the Georgia Nonprofit Corporation Code), its successors and assigns.

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

1.03 Builder. "Builder" means any Person who purchases one or more Lots for the purpose of constructing a Residence thereon for later sale to consumers in the ordinary course of such Person's business.

1.04 By-Laws. "By-Laws" means the By-Laws of the Association.

1.05 Commencement Date. "Commencement Date" as to any Lot means the first day of the month following the earlier of (a) the month in which the Residence on such Lot is sold to a third party other than Declarant or the Builder of such Lot, or (b) the one year anniversary of conveyance of the Lot from Declarant to a Builder or Owner.

1.06 Common Property. "Common Property" means all real property (together with any and all improvements now or hereafter located thereon) owned by the Association or in certain instances over which the Association has been granted permanent easements, for the common use and enjoyment of the Owners.

1.07 Declarant. "Declarant" means Arvida - Hickory Springs, L.P., a Delaware limited partnership qualified to do business in the State of Georgia, and its successors-in-title and assigns, provided any such successors-in-title or assigns shall acquire for the purpose of development or sale all or any portion of the remaining undeveloped or unsold portions of the real property described in Exhibit "A", or the real property which is intended to become part of the Development, and provided further, in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign is designated as the "Declarant" hereunder by the grantor of such conveyance, which grantor shall be the "Declarant" hereunder at the time of such conveyance; provided, further, upon such designation of successor Declarant, all rights and obligations of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the property described in Exhibit "A", attached hereto, and which is now or hereafter

subjected to this Declaration, there shall be only one person or legal entity entitled to exercise the rights and powers of the "Declarant" hereunder at any one time.

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

1.09 Lot. "Lot" means any parcel of land shown upon a subdivision plat recorded in the Office of the Clerk of the Superior Court of Cobb County, covering any portion of the Property, provided, however, that no portion of the Common Property shall ever be a Lot except as provided in 2.05.

1.10 Member. "Member" means any member of the Association.

1.11 Membership. "Membership" means the collective total of all Members of the Association.

1.12 Occupant. "Occupant" shall mean any person occupying all or any portion of a Lot located within the Development for any period of time, regardless of whether such Person is a tenant or the Owner of such property.

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

1.14 Person. "Person" means a human being, corporation, partnership, trustee or other legal entity.

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

1.16 Residence. "Residence" shall mean a structure situated upon a Lot intended for independent use and occupancy as a residence for a single family. A structure and the land owned as a part thereof (the Lot) shall not become a Residence until a certificate of occupancy shall have been issued by the appropriate governmental authorities as a pre-requisite to the occupancy of such Residence and until the Lot and structure located thereon shall have been conveyed to a third party other

than the builder thereof. The Owner of a Residence shall notify the Association or its designee immediately upon issuance of a Certificate of Occupancy for the Residence.

1.17 Restrictions. "Restrictions" means all covenants, restrictions, easements, charges, liens and other obligations created or imposed by this Declaration.

1.18 Structure. "Structure" means:

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

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

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

ARTICLE II COMMON PROPERTY

2.01 Conveyance of Common Property.

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

(b) It is contemplated by the Declarant that the Declarant will convey to the Association Common Property for scenic and natural area preservation and for general recreational use to include facilities for swimming, tennis

and exercise. The Declarant may, at Declarant's sole discretion, modify, alter, increase, reduce and otherwise change the Common Property contemplated to be conveyed to the Association in accordance with this subsection (b) of this Section 2.01 at any time prior to conveyance of such Common Property to the Association.

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

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

(e) Lakes, dams and detention ponds shall, without limitation, be included in the property that may be conveyed by Declarant and which shall be accepted by the Association. Declarant shall not be required to make any improvements whatsoever to the property to be conveyed and accepted pursuant to this Section including, without limitation, dredging or otherwise removing silt from any lake or detention pond that may be conveyed. Nothing herein shall be construed to make Declarant or the Association liable for damages resulting from flooding due to heavy rainfall or other natural occurrences.

2.02 Right of Enjoyment. Every Owner of a Residence shall have a right and easement to use and enjoy the Common Property, which right shall be appurtenant to and shall pass with the title to every Lot upon transfer; provided, however, that no Owner shall do any act which interferes with the free use and enjoyment of the Common Property by all other Owners. Declarant (for so long as Declarant retains the right to appoint and remove members of the Board and officers of the Association) and/or the Association may permit persons who are not Owners of Residences to use and enjoy part or all of the Common Property subject to such limitations, and upon such terms and conditions, as it may from time to time establish. The right and easement of enjoyment granted or permitted by this Section 2.02 is subject to suspension by the Association as provided in Sections 2.03(f) and 3.05.

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

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

(b) borrow money for the purpose of carrying out the activities of the Association, including the acquisition, construction, improvement, equipping and maintenance of Common Property, and in aid thereof to encumber by deed to secure debt, mortgage or other security interest any or all of the Association's property including Common Property and revenues from assessments, user fees and other sources;

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

(d) dedicate or transfer all or any part of the Common Property or interests therein to any municipality or other governmental body, agency or authority for such purposes and subject to such provisions and conditions as may be agreed upon by the Association and such grantee, including a provision that such property or interest shall, if such dedication or transfer is approved by a two-thirds (2/3) vote of the Members who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the By-Laws of the Association and by the Declarant so long as Declarant has the right to appoint and remove members of the Board and officers of the Association, cease to be subject to this Declaration or all or any part of the Restrictions while held by any such municipality or other governmental body, agency or authority;

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

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

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

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

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

2.04 Conveyance of Common Property by Declarant to Association. The Declarant may transfer or convey to the Association any personal property and any improved or unimproved property, leasehold, easement or other property interest which is or may be subjected to the terms of this Declaration. Such conveyance shall be accepted by the Association, and the property shall thereafter be Common Property to be maintained by the Association for the benefit of all of its Members. Notwithstanding the foregoing, such conveyance shall be made subject to the right of the Declarant to make adjustments in the boundary lines of the Common Property deemed reasonably necessary by Declarant, and the deed of conveyance of the Common Property shall so provide.

2.05 Types of Common Property. At the time of the conveyance of any real property or grant of easement by the Declarant to the Association to be used as Common Property, the Declarant shall designate in the deed of conveyance or easement that such real property is to be Common Property, and further may designate in the deed of conveyance or easement the specific or general purpose or purposes for which such real property or any portion thereof may be used, and in such event, such real property or portion thereof shall not be used for any different purpose or purposes, without the prior written consent of the Declarant while Declarant is an Owner, and, after Declarant no longer has the right to appoint and remove members of the Board and officers of the Association, without a two-thirds (2/3) vote of the Members of the Association.

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

2.07 Maintenance. The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair and replacement of all landscaping and improvements situated on the Common Property. In addition, the Association shall maintain grass and other landscaping located along or in dedicated rights of way which were installed and maintained by Declarant, to the extent

permitted by the applicable governmental authority. The foregoing maintenance shall be performed consistent with the Development-Wide Standard.

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

ARTICLE III HICKORY SPRINGS HOMEOWNERS' ASSOCIATION

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

3.02 Membership in the Association. Every Owner shall automatically be a member of the Association and such membership shall terminate only as provided in this Declaration of Covenants, Restrictions and Easements. For purposes of voting, there shall be two (2) classes of Members as set forth in Section 3.03.

3.03 Voting Rights.

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

(b) The Declarant shall be the sole Class B Member and shall be entitled to three (3) votes for each Lot owned; provided, however, in no event shall the Class B Member have less than the total number of Class A votes plus one (1).

The Class B Membership shall cease and be converted to Class A Membership at such time as Declarant no longer retains the right to appoint and remove members of the Board and officers of the Association pursuant to Section 3.08 below.

(c) The Development will be composed of Lots to be developed in phases containing unequal numbers of Lots. Each such phase will be platted of record in the Office of the Clerk of the Superior Court of Cobb County in accordance with Article X of this Declaration. The Declarant shall notify the Association in writing when the final phase of the Development has been so platted of record. By acceptance of a deed conveying a Lot, each Owner acknowledges that, upon the filing by Declarant of the subdivision plats covering such phases, the total votes outstanding in the Association will automatically increase based upon the number of Lots in the phases added and in accordance with the formula set forth in subsection (b) of this Section 3.03 and in no event shall Class B Membership cease and be converted to Class A Membership (as provided in subsection (b) of this Section 3.03) until after the Association receives the written notice provided for in the preceding sentence; provided, however, nothing contained herein shall obligate the Declarant to develop any proposed phase of the Development unless such phase is subjected to this Declaration.

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

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

(a) shall be subject to the Right of Abatement, as defined in Section 8.02 by reason of having failed to take the reasonable steps to remedy a violation or breach of either the Restrictions or the Design Standards of the ACC (as herein defined) within thirty (30) days after having received notice of the same pursuant to the provisions of Section 5.11, 6.14 or 8.02 hereof;

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

(c) shall be in violation of the rules and regulations of the Association relating to the use, operation and maintenance of Common Property. Such suspension shall be for the balance of the period in which said Member or person

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

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

3.07 Voting Procedures. The procedures for the election of Directors of the Association and the resolution of such other issues as may be brought before the membership of the Association shall be governed by this Declaration, the Georgia Nonprofit Corporation Code, the Articles of Incorporation of the Association, and the By-Laws of the Association, as each shall from time to time be in force and effect.

3.08 Control by Declarant.

(a) Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the Bylaws of the Association, Declarant hereby retains the right to appoint and remove any members of the Board of the Association and any officer or officers of the Association until 15 days after the first of the following events shall occur: (i) the expiration of fifteen (15) years after the date of the recording of this Declaration; (ii) the date upon which all of the Lots intended by Declarant to be a part of the Development have been conveyed to Owners other than a person or persons constituting Declarant; or (iii) the surrender by Declarant of the authority to appoint and remove directors and officers by an express amendment to this Declaration executed and recorded by Declarant, provided, however, that the Owners shall be entitled to elect certain members of the Board of the Association in accordance with the terms of the By-Laws of the Association which shall not be removable by the Declarant acting alone.

(b) Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of this Section, such right shall automatically pass to the Owners, including Declarant if Declarant then owns one or more Lots; and a special meeting of the Association shall be called at such time. At such special meeting the Owners shall elect a new Board of Directors which shall undertake the responsibilities of the Board and Declarant shall deliver the books, accounts, and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period which Declarant has in its possession. Each

Owner by acceptance of a deed to or other conveyances of a Lot vests in Declarant such authority to appoint and remove directors and officers of the Association as provided in this Section. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law and any other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

3.09 Monitoring Services. The Association may, but shall not be obligated to, maintain or support or contract for the provision of monitoring services within the Development. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety within the Development, nor shall either of them be held liable for any loss or damage by reason of failure to provide adequate monitoring services or of ineffectiveness of any such measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other monitoring system or measure can not be compromised or circumvented, nor that any such system or measure undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges and understands, and covenants to inform its tenants, that the Association, its Board of Directors and committees and Declarant, are not insurers of safety and that each person using the Development assumes all risks of personal injury, death, and loss or damage to property, including Residences and the contents of Residences, resulting from acts of third parties.

3.10 Indemnification. The Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees, reasonably incurred 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 he or she may be a party by reason of being or having been an officer, director, or committee member, to the fullest extent allowed by law.

ARTICLE IV ASSESSMENTS

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

(a) to pay to the Association the annual assessments which may or shall be levied by the Association pursuant to this Declaration against all Lots owned by him;

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

(c) to pay to the Association any specific assessments for capital improvements and other charges which may or shall be levied by the Association pursuant to this Declaration against any or all Lots owned by him;

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

(e) that such continuing charge and lien on such Lot binds such Lot in the hands of the then Owner, and the Owner's grantees, heirs, devisees, legal representatives, successors and assigns. Such charge and lien is superior to any and all charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon such Lots whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, except (i) such liens for taxes or other public charges as are by applicable law made superior, and (ii) all deeds to secure debt given to secure a loan the proceeds of which are used by the Owner (1) to purchase a Lot or Lots (together with any and all Structures which may from time to time be placed or located thereon) and (2) to finance the construction repair or alteration of Structures.

(f) that no sale or transfer at foreclosure or in lieu of foreclosure shall relieve any Lot from liability for any assessment thereafter assessed;

(g) that all annual, special and specific assessments (together with interest thereon as provided in Section 4.09 of this Declaration and costs of collection including reasonable attorneys' fees) levied against any Lot owned by him during the period that he is an Owner shall be (in addition to being a continuing charge and lien against such Lot as provided in Section 4.01(d) of this Declaration) a personal obligation which will survive any sale or transfer of the Lot owned by him; provided, however, that such personal obligation for delinquent assessments shall not pass to an Owner's successor in title unless expressly assumed by such successor.

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

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

4.04 Annual Assessment.

(a) Beginning on the Commencement Date applicable to each Lot, each Lot shall be subject to an annual assessment of _____ Dollars per Lot. In the event that the Commencement Date falls on a day other than January 1, the annual assessment for such year shall be prorated so that each Owner pays an annual assessment proportional to the number of days remaining in the calendar year. The words "Assessment Year" as used herein shall mean the calendar year with the first Assessment Year commencing on January 1 of the year immediately following the Commencement Date. For so long as Declarant owns a Lot, the annual assessment shall not be reduced below \$_____ without the express written consent of Declarant.

(b) After the first Assessment Year the amount of the annual assessment shall be determined pursuant to Section 4.06 below.

4.05 Special Assessments.

(a) In addition to the annual assessments authorized by this Article IV, the Association may levy, in any Assessment Year and with such frequency as the Association shall deem necessary, special assessments for the purpose of paying, in whole or in part, any unanticipated operating expenses, as well as the cost of any construction, reconstruction, repair or replacement of a capital improvement on the Common Property. Such special

assessments may be levied by the Board in any Assessment Year without the approval of the members, which special assessments in the aggregate do not exceed an amount equal to the annual assessment then in effect. Special assessments exceeding said amount shall require the approval of two-thirds (2/3) of the Members of the Association who are present in person or by proxy at a meeting of Members duly held in accordance with the provisions of the By-Laws of the Association and this Declaration.

(b) All Members of the Association shall be given written notice by the Board not less than thirty (30) nor more than sixty (60) days in advance of any meeting of the Members of the Association at which the Board shall propose taking action pursuant to and Section 4.05 (a). Such written notice shall specify under which Section or Sections the Board will propose action. At such meeting, the presence of Members or of proxies entitled to cast one-third (1/3) of the total votes outstanding shall constitute a quorum. If the required quorum is not present at such meeting, a second meeting may be called by the Board subject to the same notice requirement, and the required quorum at such second meeting shall be twenty-five percent (25%) of the total votes outstanding. No such second meeting shall be held more than sixty (60) days following the first meeting. If the required quorum is not present at the second meeting, the Board may take such action without approval of the Members.

4.06 Assessment Procedure.

(a) The Board shall establish the annual assessment for each Assessment Year at an amount as determined by the provisions of this Article IV, and shall also establish the date during the Assessment Year on which the annual assessment shall be due and payable (such date is hereinafter referred to as the "Due Date"). The Board shall also establish an annual budget which shall list the estimated operating expenses and shall contain an amount to be set aside each year into a reserve allowance to be used for future repair and replacement of the Common Property; provided, however, in no event shall the Board be required to provide for a reserve sufficient to cover all such future repair and replacement of the Common Property, it being intended that a portion of such costs may be covered by Special Assessment. The Board shall cause the Association to send to each Owner at least thirty (30) days in advance of the effective date of the budget, a copy of the budget and a written notice setting forth the amount of the annual assessment and the Due Date. After Declarant no longer has the right to appoint or remove members of the Board and officers of the Association, such budget and assessment shall become effective unless disapproved at a meeting by

Members representing at least 75% of the total votes in the Association. If the budget proves inadequate for any reason, the Board may prepare a revised budget for the remainder of the fiscal year, which revised budget shall become effective unless disapproved at a meeting by Members in the same manner as prescribed for the initial budget. There shall be no obligation to call a meeting for the purpose of considering the budget or any revised budget except on petition of the Members as required for special meetings in the By-Laws, which petition must be presented to the Board within 10 days after delivery of the notice of assessments.

If a budget is not adopted for any year, then until such time as a budget is adopted, the budget in effect for the immediately preceding year shall continue for the current year.

The Board may establish reasonable payment procedures to allow or require payment of the annual assessment in installments during the Assessment Year. The Board shall also establish payment procedures for payment of any special assessments for capital improvements which may be levied in accordance with the provisions of this Article IV.

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

4.08 Declarant's Obligation for Assessments. Declarant may annually elect either to pay regular assessments on all of its unsold Lots, notwithstanding the Commencement Date for assessments set forth in Section 4.04 (a), or to pay the difference between the amount of assessments collected on all Lots subject to assessment and the amount of actual expenditures by the Association during the fiscal year (but specifically not including an allocation for the reserve allowance). The Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. To the extent that Declarant contributes payments beyond that which would be required if Declarant elected to pay regular annual assessments, such amounts shall be treated as a loan to the Association. The terms of such loan shall include interest at the Applicable Federal Rate as indicated in the tables published pursuant to Internal Revenue Code Section 1274, and payment in full shall be due upon demand at any time after one year following the date on which Declarant no longer has the right to appoint or remove members of the Board and officers of the Association.

4.09 Effect of Nonpayment of Assessments. Any Assessment which is not paid on or before the Due Date shall bear interest after the Due Date at the lower of the highest legal rate of interest which can be charged or the rate of eighteen percent (18%) per annum, or at such rate as the Board may from time to

time establish, provided, however, that in no event shall the Board have the power to establish a rate of interest in violation of the laws of the State of Georgia. In the event of default in the payment of any one or more installments of an assessment, the Board may declare any remaining balance of the assessment at once due and payable. In the event that an owner shall fail to pay fully any portion of any assessment prior to the date on which payment is due, such unpaid portion (including any remaining balance declared immediately due and payable in accordance with the preceding sentence), together with interest and costs of collection including reasonable attorneys' fees, shall be a binding personal obligation of such Owner, as well as a lien on such Owner's Lot enforceable in accordance with the provisions of this Declaration.

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

4.11 Approval by Declarant. Notwithstanding anything to the contrary contained herein, no special assessment shall be made without the Approval of Declarant for so long as Declarant owns a Lot.

4.12 Specific Assessments. The Board shall have the power to specifically assess any one or more Lots pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's 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. The Board may specifically assess Owners for the following expenses, except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association as provided herein:

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

(b) Expenses incurred by the Association pursuant to Section 6.14 hereof for the Lots being assessed; and

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

ARTICLE V ARCHITECTURAL CONTROL

5.01 General. No structure (including, but not limited to, buildings, signs, walls, and mailboxes) shall be placed, erected, or installed upon any Unit, and no improvements (including staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements, and planting or removal of landscaping materials) shall take place except in compliance with this Article. Notwithstanding this, the Board may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution. Further, the Declarant, in its discretion, may exempt certain designees, including but not limited to, Builders, from any or all of the requirements of this Article for original construction, provided such designees are contractually obligated to comply with design review restrictions imposed by Declarant.

Any Owner may remodel, paint or redecorate the interior of structure(s) of a Unit without approval provided such improvements are not visible from outside such structure(s). Modification to the interior of screen porches, patios, and similar portions of a Residence visible from outside the Residence shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect or licensed building designer.

This Article shall not apply to the activities of the Declarant, nor to improvements to the Common Area by or on behalf of the Association.

5.02 Architectural Control Committee - Creation and Composition.

(a) An Architectural Control Committee (the "ACC") shall be established consisting of not less than three (3) members, provided, however, that the ACC shall always have an odd number of members. Notwithstanding anything to the contrary contained herein, Declarant shall have the right,

but not the obligation, to appoint, remove and replace all members of the ACC until the plans for all of the Residences for all of the Lots in the Development have been approved by the ACC. Thereafter, the Board shall appoint the members of the ACC. The ACC need not include any member of the Association. All costs of operating the ACC, may, at the discretion of Declarant, be borne by the Association. While Declarant has the right to appoint members of the ACC, Declarant shall have the right to delegate the responsibilities of the ACC to an independent qualified consultant.

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

5.03 Purpose, Powers and Duties of the ACC. The purpose of the ACC is to assure that any installation, construction or alteration of any Structure on any Lot shall be submitted to the ACC for approval (i) as to whether the proposed installation, construction or alteration is in conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the standards of the Development, and (ii) as to the location of Structures with respect to topography, finished ground elevation and surrounding Structures. To the extent necessary to carry out such purpose, the ACC shall have all of the powers and duties to do each and every thing necessary, suitable, convenient or proper for, or in connection with, or incidental to, the accomplishment of such purpose, including, without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any Structure on any Lot.

5.04 Officers, Subcommittees and Compensation. The members of the ACC shall appoint a Chairman from among their number and may appoint from among their number such other officers and subcommittees of members of the ACC as they shall from time to time determine necessary. The members of the ACC shall be

reimbursed by the Association for traveling expenses and other reasonable out-of-pocket costs incurred in the performance of their duties as members of the ACC.

5.05 Operations of the ACC.

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

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

5.06 Design Standards.

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

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

- (ii) governing the procedure for such submission of plans and specifications;
- (iii) establishing guidelines with respect to the approval and disapproval of design features, architectural styles, exterior colors and materials, details of construction, location and size of Structures and all other matters that require approval by the ACC pursuant to this Declaration; and
- (iv) assuring the conformity and harmony of external design and general quality of the Development.

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

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

(a) a site plan showing the location of all proposed and existing Structures on the Lot including building setbacks, open space, driveways, walkways and parking spaces including the number thereof and all siltation and erosion control measures;

(b) a foundation plan;

(c) a floor plan;

(d) exterior elevations of all proposed Structures and alterations to existing Structures, as such Structures will appear after all back-filling and landscaping are completed;

(e) specifications of materials, color scheme, lighting scheme and other details affecting the exterior appearance of all proposed Structures and alterations to existing Structures; and

(f) plans for landscaping and grading.

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

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

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

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

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

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

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

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

5.13 Certification of Compliance.

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

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

The issuance of the Certificate shall in no way be construed to certify to any party that the Structures have been built in accordance with any applicable rule or regulation.

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

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

5.16 Disclaimer as to ACC Approval. Plans and specifications are not reviewed for engineering or structural design or quality of materials, and by approving such plans and specifications neither the ACC, the members thereof, nor the Association assumes liability or responsibility therefor, nor for any defect in any structure constructed from such plans and specifications. Neither Declarant, the Association, the ACC, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner of property affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications and every Owner agrees that he will not bring any action or suit against Declarant, the Association, the ACC, the Board, or the officers, directors, members, employees, and agents of any of

them to recover any such damages and hereby releases, premises, quit-claims, and covenants not to sue for all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

5.17 Image Committee. The ACC shall establish an image committee (the "Image Committee") which shall be composed of one (1) member of the ACC and two (2) Members of the Association, other than Declarant, which shall be responsible for the review and approval process for alterations and modifications of existing Structures as required pursuant to Paragraph 5.06, and shall have such other responsibilities as may be delegated to the Image Committee by the ACC, provided, however, in all instances the ACC shall have the right to veto any action or decision of the Image Committee.

5.18 Variance. The ACC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the ACC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance. Notwithstanding the above, the Image Committee may not authorize variances without the written consent of the Declarant, as long as Declarant owns any portion of the Property.

ARTICLE VI GENERAL COVENANTS AND RESTRICTIONS

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

6.02 Restriction of Use. Lots may be used for single-family residences only and for no other purpose; provided that Declarant and its designees may operate a sales/management/construction office trailer and/or model home (and parking lot) on a Lot or Lots designated by Declarant.

6.03 Resubdivision of Property. No Lot may be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise, without the prior written approval of the ACC of plans and specifications for such split, division or subdivision. Notwithstanding the foregoing, nothing herein shall prevent

Declarant or the Owners of any Lots from combining two or more Lots into one Lot for construction of a single Lot thereon; provided, however, that such combined Lot may not be subdivided thereafter; and, provided further, that the Owner of the Lot on such Lot shall be responsible for annual and special assessments based upon the number of Lots combined into one Lot.

6.04 Erosion Control. No activity which may create erosion or siltation problems shall be undertaken on any Lot without the prior written approval of the ACC of plans and specifications for the prevention and control of such erosion or siltation. The ACC may, as a condition of approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include (by way of example and not of limitation) physical devices for controlling the run-off and drainage of water, special precautions in grading and otherwise changing the natural landscape and required landscaping as provided for in Section 6.05. Guidelines for the prevention and control of erosion and siltation may be included in the Design Standards of the ACC. A breach of such guidelines will give the Association the Right of Abatement.

6.05 Landscaping. No construction or alteration of any Structure shall take place without the prior written approval by the ACC of plans and specifications for the landscaping to accompany such construction or alteration. Guidelines for the landscaping to accompany the construction or alteration of any Structure may be included in the Development Guidelines of the ACC.

6.06 Trees. No tree having a diameter of three (3) inches or more (measured from a point two (2) feet above ground level) shall be removed from any Lot (except with respect to the removal and replacement of dead or diseased trees) unless such removal is in conformity with approved landscaping plans and specifications submitted pursuant to the provisions of Section 6.05 hereof. Guidelines relating to the preservation of trees and other natural resources and wildlife upon the Property may be included in the Design Standards of the ACC.

6.07 Temporary Buildings. No temporary building, trailer, garage or building under construction shall be used, temporarily or permanently, as a residence on any Lot except as temporary sleeping or living quarters required or desirable for security purposes in accordance with plans and specifications therefor approved by the ACC. No contractor or builder shall erect on any Lot any temporary building or shed for use in connection with construction on such Lot; provided, however that Declarant shall have the right, so long as Declarant owns any of the Property, to operate a temporary construction trailer (with associated parking) on any Lot designated by Declarant.

6.08 Signs.

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

- (i) such signs as may be required by legal proceedings;
- (ii) not more than one "For Sale" sign, such sign having a maximum face area of four square feet; provided that such sign may only be displayed in the front yard of a Lot; and, provided, further, that if, at the time of any desired use of such sign, the Association is making "For Sale" signs available for the use Owners, the signs made available by the Association must be used (except with respect to Declarant's Lots);
- (iii) directional signs for vehicular or pedestrian safety in accordance with plans and specifications approved by the ACC;
- (iv) directional signs for sales and/or marketing by Declarant; and
- (v) for rent signs are strictly prohibited.

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

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

6.10 Fences. No fence or wall of any kind shall be erected, maintained, or altered on any Lot without the prior written approval of the ACC of plans and specifications for such fences and walls. Guidelines relating to the design, location and uses of fences and walls may be included in the Design Standards of the ACC.

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

6.12 Antennae, Etc. No exterior television or radio antennae or satellite dish or receiver or solar equipment of any sort shall be placed, allowed or maintained upon any portion of a Structure or Lot without prior written approval by the ACC, which shall not be unreasonably withheld; provided, that Owner shall be required to appropriately screen from view by neighboring residences and streets; provided, further, that such screening does not unreasonably increase the cost of installation of such equipment. No antennae shall be installed or used for the purpose of transmitting of electronic signals.

6.13 Clotheslines, Garbage Cans, Etc. No clotheslines shall be allowed on any Lot (except inside a Residence), and equipment, garbage cans and woodpiles shall be kept screened by adequate planting or fencing so as to conceal them from view by neighboring residences and streets, and may be maintained in the rear yard on a Lot only.

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

6.15 Commercial and Recreational Vehicles and Trailers. No commercial vehicle, house trailer, mobile home, motor home, recreational vehicle, camper, truck with camper top, boat or boat trailer or like equipment shall be permitted on any Lot on a permanent basis, but shall be allowed on a temporary basis not to exceed forty-eight (48) consecutive hours. Notwithstanding the foregoing, any such vehicles or equipment may be stored on a Lot, provided such vehicle or equipment is kept in an enclosed space and is concealed from view by neighboring residences and streets. No such vehicle may be parked on any Common Property.

6.16 Recreational Equipment, Etc. Mailboxes and all exterior recreational equipment (including, but not limited to basketball hoops, swing sets and similar sports and play equipment) and any yard ornaments, animal pens, dog runs, flags or other exterior fixtures shall comply with the Design Standards or otherwise be subject to approval by the ACC. Recreational and playground equipment shall be placed or installed only upon the rear of a Lot as approved by the ACC. Basketball goals may be placed adjacent to the driveway, but shall be painted to match the house. No above ground pool shall be allowed.

6.17 Street Parking. No vehicle shall be permitted to be parked on any street in the Development except on a temporary basis, not to exceed forty-eight (48) consecutive hours.

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

6.19 Solid Waste.

(a) No person shall dump rubbish, garbage, or any other form of solid waste on any Lot or on Common Property.

(b) Except during approved construction and as approved by the appropriate governmental authority, no person shall burn rubbish, garbage, or any other form of solid waste on any Lot or on Common Property;

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

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

6.20 Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereof which may be or may become any annoyance or nuisance to the community.

6.21 Religious and Holiday Displays. Owners shall have the right to display religious and holiday signs, symbols, and decorations inside or outside of Residences of the kinds normally displayed in residences located in single-family residential neighborhoods, except that the Association may adopt reasonable time, place, and manner restrictions on displays visible from the outdoors for the purpose of minimizing damage and disturbance to other Owners and occupants.

6.22 Activities Within Residences. The Board shall have the right to adopt reasonable rules which prohibit activities within the confines of Residences not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Residences, that generate excessive noise or traffic, that create unsightly conditions visible outside the Residence, or that create an unreasonable source of annoyance.

ARTICLE VII
EASEMENTS, ZONING AND OTHER RESTRICTIONS;
OTHER RESERVED RIGHTS TO DECLARANT

7.01 Easements.

(a) Declarant hereby expressly reserves to the Declarant, its successors and assigns forever, the right to create perpetual easements in, on, over and under any part of the Property owned by Declarant for any purpose which Declarant deems necessary, including, by way of example, and not limitation, the following:

- (i) the erection, installation, construction and maintenance of wires, lines, conduits and poles and the necessary or proper attachments in connection with the transmission of

electricity, telephone, cable television cables and other utilities and similar, facilities;

- (ii) the erection, installation, construction and maintenance of storm-water drains, land drains, public and private sewers, irrigation systems, pipelines for supplying gas, water and heat, and for any other public or quasi-public facility, service or function;
- (iii) slope control purposes, including the right to grade and plant slopes and prevent the doing of any activity which might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow;
- (iv) the planting or re-planting of hedges, shrubbery, bushes, trees, flowers and plants of any nature; and
- (v) such other purposes which are convenient or necessary for the use and operation of property of Declarant, as long as such action does not hamper the enjoyment of the Development, as built or expanded, by the Owners.

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

7.02 Easement Area. The words "Easement Area" as used herein shall mean those areas on any Lot or any other portion of the Property with respect to which easements are shown on a recorded deed, easement agreement or on any filed or recorded map or plat relating thereto. All conveyances of Lots hereafter made, whether by Declarant or otherwise, will be construed to grant and reserve the easements contained in this Article, even though no specific reference to such easements or to this Article appears in the instrument for such conveyance.

7.03 Entry.

(a) The Declarant and its employees, agents, successors and assigns, shall have the right at all reasonable times to enter upon all parts of each Easement Area for any of the purposes for which such Easement Area is reserved, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and the carrying out of such purposes, provided the same are done in

accordance with the provisions of this Section. The Declarant and its employees, agents, successors and assigns shall be responsible for leaving each Lot in good condition and repair following any work or activity undertaken in an Easement Area pursuant to the provisions of Section 7.01.

7.04 Drainage Easement. Notwithstanding the provisions of Sections 7.01 and 7.02 to the contrary, an easement is hereby reserved to Declarant for itself and its successors and assigns and granted to the Association, its officers, agents, employees, successors and assigns to enter upon, across, over, in, and under any portion of the Property for the purpose of changing, correcting, or otherwise modifying the grade or drainage channels of the Property so as to improve the drainage of water. Reasonable efforts will be made to use this easement so as not to disturb the uses of the Owners, the Association and Declarant, as applicable, to the extent possible; to prosecute such drainage work promptly and expeditiously; and to restore any areas affected by such work to a sightly and usable condition as soon as reasonably possible following such work. Declarant, or its officers, agents, employees, successors and assigns must inform and obtain the approval of the Board prior to undertaking such drainage work, which approval will not be unreasonably withheld.

7.05 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner, occupant, or the Association.

7.06 Easements for Lake and Pond Maintenance and Flood Water. The Declarant reserves for itself and its successors, assigns, and designees the nonexclusive right and easement, but not the obligation, to enter upon the lakes, ponds, streams, and wetlands located within the Common Area to (a) install, keep, maintain, and replace pumps in order to provide water for the irrigation of any of the Common Area; (b) construct, maintain, and repair any bulkhead, wall, dam, or other structure retaining water; and (c) remove trash and other debris therefrom and fulfill their maintenance responsibilities as provided in this Declaration. The Declarant's rights and easements provided in this Section shall be transferred to the Association at such time as the Declarant shall cease to own any property subject to the Declaration, or such earlier time as Declarant may elect, in its sole discretion, to transfer such rights by a written instrument.

The Declarant, the Association, and their designees shall have an access easement over and across any of the Properties abutting or containing any portion of any of the lakes, ponds, streams, or wetlands to the extent reasonably necessary to exercise their rights under this Section.

There is further reserved herein for the benefit of Declarant, the Association, and their designees, perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Lots (but not the Residences thereon) adjacent to or within 50 feet of lake beds, ponds, and streams within the Properties, in order to (a) temporarily flood and back water upon and maintain water over such portions of the Properties; (b) fill, drain, dredge, deepen, clean, fertilize, dye, and generally maintain the lakes, ponds, streams, and wetlands within the Common Area; (c) maintain and landscape the slopes and banks pertaining to such lakes, ponds, streams, and wetlands; and (d) enter upon and across such portions of the Property for the purpose of exercising its rights under this Section. All persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to heavy rainfall or other natural disasters. Any lakes or wetlands on the Property are designed as water management areas and are not designed as aesthetic features. Due to fluctuations in water elevations within the immediate areas, the water level of lakes, creeks and streams will rise and fall. Declarant has no control over such elevations. Therefore, each Owner releases Declarant, and its affiliates, successors and assigns from and against any and all losses, claims, demands, damages, costs and expenses of fees and costs, related to or arising out of the water elevations, including the absence of any water in the lakes, creeks or streams. Neither the Association nor any Owner shall alter, modify, expand or fill any lakes or wetlands located on or in the vicinity of the Property, without the prior written approval of the Declarant, so long as Declarant owns any Lots or any portion of the Property, and such local, state and federal authorities as may have relevant jurisdiction over such matters.

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

ARTICLE VIII
ENFORCEMENT

8.01 Right of Enforcement.

(a) This Declaration and the Restrictions contained herein shall inure to the benefit of and shall be enforceable by (i) the Declarant so long as it is an Owner, (ii) after Declarant no longer has the right to appoint or remove members of the Board and officers of the Association, or at such other time in such circumstances as determined by Declarant, the Association and (iii) each Owner, his legal representatives, heirs, successors and assigns, provided that with respect to such Owner all of the following are true:

- (i) Such Owner was a Member when the event complained of occurred;
- (ii) Such Owner first demanded that the Association commence appropriate proceedings in the Association's name, and that:
 - a. such demand was refused; or
 - b. such demand was ignored for more than thirty (30) days; or
 - c. more than ninety (90) days have passed since the Association commenced an investigation of the demand, and no action has been taken by the Association; or
 - d. the Board has not made a determination that the maintenance of a proceeding by such Owner would be adverse to the best interests of the Association.

(b) Upon termination of the Owner's proceedings, the court or arbitrators (as the case may be) may require the plaintiff to reimburse the defendant upon finding that the proceedings were commenced without reasonable cause.

(c) The court or arbitrators may award reasonable expenses for maintaining the proceedings, including reasonable attorney's fees, to a successful plaintiff or to the Person commencing the proceedings who receives any relief, whether by judgment, compromise, or settlement, and require that the Person account for the remainder of any proceeds to the Association; however, this subparagraph (c) does not apply to any relief rendered for the benefit of injured Members only and limited to a recovery of the loss or damage of the injured Members.

8.02 Right of Abatement.

(a) Except where different notice provisions are provided in Sections 5.11 and 6.14, in the event of a violation or breach of any Restriction contained in this Declaration the Association shall give written notice by certified mail to the Owner setting forth in reasonable detail the nature of such violation or breach and the specific action or actions needed to be taken to remedy such violation or breach. If the Owner shall fail to take reasonable steps to remedy such violation or breach within thirty (30) days after the mailing of said written notice, then the Association shall have the Right of Abatement.

(b) The Right of Abatement, as used in this Section and in Sections 5.11 and 6.14 hereof, means the right of the Association, through its agents and employees, to enter at all reasonable times upon any Lot or Structure, as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove, or repair such violation, breach or other condition which may exist thereon contrary to the provisions hereof, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and such actions, provided such entry and such actions are carried out in accordance with the provisions of this Section, and with the cost thereof including the costs of collection including reasonable attorneys' fees, together with interest thereon at the lower of the highest rate permitted by Law or 18% to be a binding personal obligation of such Owner enforceable in law, as well as a lien on such Owner's Lot enforceable pursuant to the provisions of Section 8.03 hereof. Such lien shall be superior to any and all charges, liens or encumbrances which may in any manner arise or be imposed upon the Lot after such entry whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, excepting only (i) such liens for taxes or other public charges as are by applicable law made superior, (ii) the liens created by Section 4.01 hereof and (iii) all deeds to secure debt given to secure a loan the proceeds of which are used by the Owner (1) to purchase such Lot or Lots (together with any and all Structures which may from time to time be placed or located thereon) and (2) to finance the construction, repair or alteration of Structures.

8.03 Collection of Assessments and Enforcement of Lien.

(a) If any assessment, interest, cost or other charge is not paid as required by this Declaration, the Association may bring either an action at law against the Owner personally obligated to pay the same, or an action to foreclose any lien created by this Declaration against the

Lot or Lots subject to the lien, or both, for the purpose of collecting such assessment, cost or charge, plus any interest thereon and costs of collection, including reasonable attorneys' fees.

(b) As an additional remedy, but in no way as a limitation on the remedies, if any assessment, interest, cost or other charge is not paid as required by this Declaration, each Owner hereby grants to the Association and its assigns the following irrevocable power of attorney: To sell the said Lot or Lots subject to the lien at auction, at the usual place for conducting sales at the Court House in Cobb County, Georgia, to the highest bidder for cash, after advertising the time, terms and place of such sale once a week for four weeks immediately preceding such sale (but without regard to the number of days) in the paper in which the Sheriff's advertisements for Cobb County, Georgia are published, all other notice being hereby waived by each Owner, and the Association or any person on behalf of the Association, or assigns, may bid and purchase at such sale and thereupon execute and deliver to the purchaser or purchasers at such sale a conveyance of said property in fee simple, which conveyance shall contain recitals as to the happenings of the default upon which the execution of the power of sale herein granted depends, and each Owner hereby constitutes and appoints the Association and assigns, the agent and attorney in fact of each Owner to make such recitals, and hereby covenants and agrees that the recitals so to be made by the Association, or assigns, shall be binding and conclusive upon the Owner whose property is the subject matter of such sale, and the heirs, executors, administrators and assigns of such Owner, and that the conveyance to be made by the Association or assigns, shall be effectual to bar all equity of redemption of such Owner, or the successors in interest of such Owner, in and to said Lot or Lots, and the Association or assigns shall collect the proceeds of such sale, and after reserving therefrom the entire amount of assessment, interest, cost or other charge due, together with all costs and expenses of sale and fifteen percent of the aggregate amount due for attorneys' fees, shall pay any excess to such Owner, or to the heirs or assigns of such Owner as provided by law. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise and are granted as cumulative to the remedies for collection of said indebtedness provided by law.

(c) WAIVER. EACH OWNER, BY ACCEPTANCE OF A DEED CONVEYING A LOT SUBJECT TO THIS DECLARATION, WAIVES ANY RIGHT WHICH OWNER MAY HAVE UNDER THE CONSTITUTION OR THE LAWS OF THE STATE OF GEORGIA OR THE CONSTITUTION OR THE LAWS OF THE UNITED STATES OF AMERICA TO NOTICE OR TO A JUDICIAL HEARING PRIOR TO THE EXERCISE OF ANY RIGHT OR REMEDY

PROVIDED BY THIS DECLARATION AND OWNER WAIVES OWNER'S RIGHTS. IF ANY, TO SET ASIDE OR INVALIDATE ANY SALE DULY CONSUMMATED IN ACCORDANCE WITH THE PROVISIONS OF THIS DECLARATION ON THE GROUND (IF SUCH BE THE CASE) THAT THE SALE WAS CONSUMMATED WITHOUT A PRIOR JUDICIAL HEARING. ALL WAIVERS BY OWNER IN THIS PARAGRAPH HAVE BEEN MADE VOLUNTARILY, INTELLIGENTLY AND KNOWINGLY, AFTER OWNER HAS FIRST BEEN ALLOWED THE OPPORTUNITY TO CONSULT LEGAL COUNSEL WITH RESPECT TO OWNER'S POSSIBLE RIGHTS.

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

ARTICLE IX DURATION AND AMENDMENT; RIGHTS OF DECLARANT

9.01 Duration. This Declaration and the Restrictions contained herein shall run with and bind the Property for a period of twenty (20) years from and after the date when this Declaration is filed for record with the Clerk of the Superior Court of Cobb County, Georgia, after which time this Declaration and the Restrictions shall be automatically renewed for successive periods of twenty (20) years provided, however, that after the end of the said twenty (20) year period and during any twenty (20) year renewal period (but only during such renewal period), this Declaration and the Restrictions contained herein may be terminated by an instrument executed by the proper Association officers and recorded in the office of the Clerk of the Superior Court of Cobb County, Georgia, or in such other place of recording as may be appropriate at the time of the execution of such instrument, pursuant to a resolution approving such termination which is approved by fifty-one (51%) percent vote of the Class A Members of the Association.

9.02 Amendments by Declarant. Prior to conveyance of the first Lot, Declarant may amend the Declaration without restriction. Thereafter, during any period in which Declarant retains the right to appoint and remove any directors and officers of the Association, Declarant may amend this Declaration by an instrument in writing filed and recorded in the Land Records of the Superior Court of Cobb County, Georgia, without the approval of any Member or mortgagee; provided, however, that (i) in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of such Owner's Lot or of the Common Property as set forth in this Declaration or if such amendment adversely affects the title to any Lot, such amendment shall be valid only upon the written consent thereto by

a majority in number of the then existing Members affected thereby, or (ii) in the event that such amendment would materially and adversely affect the security, title or interest of any mortgagee, such amendment shall be valid only upon the written consent thereto of all such mortgagees so affected. Any amendment made pursuant to this Section 9.02 shall be certified by Declarant as having been duly approved by Declarant, and such Members and mortgagees if required, and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself. Each Owner, by acceptance of a deed or other conveyance to a Lot, agrees to be bound by such amendments as are permitted by this Section 9.02 and further consents to the amendment of this Declaration or any other instruments relating to the Development (i) if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots subject to this Declaration, (iii) if such amendment is required by an institutional or governmental lender, purchaser or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any Lot subject to this Declaration, (iv) if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots subject to this Declaration or (v) if such amendment is necessary to correct a scrivener's error in the drafting of this Declaration.

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

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

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

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

9.04 Declarant's Rights. So long as Declarant continues to have rights under this Section, no person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Property without Declarant's written consent. Any attempted recordation without compliance herewith shall result in such instrument being void unless a consent of Declarant is subsequently recorded in the public records.

Each Owner, by accepting title to a Unit and becoming an Owner, acknowledges awareness that Hickory Springs is a master planned community, the development of which is likely to extend over many years, and agrees not to protest or otherwise object to (a) zoning or changes in zoning or to uses of, or changes in density of, the Property, or (b) changes in any conceptual or master land use plan for the Property, provided, such revision is or would be lawful (including, but not limited to, lawful by special use permit, variance or the like) and is not inconsistent with what is permitted by the Declaration (as amended from time to time). Each Owner acknowledges that no representations, warranties or guarantees are made or relied upon as to: (a) the design, construction, completion, development, use, benefits, or value of the Property; or (b) the number, types, sizes, prices or designs of any structures to be built in any part of the Property. Notwithstanding anything to the contrary in this Article, the provisions of this Article shall be enforceable only to the extent not in violation of any applicable provision of law.

The provisions of this Article may not be amended without the express written consent of Declarant, until Declarant no longer owns any of the Property.

ARTICLE X ANNEXATION AND FUTURE DEVELOPMENT

10.01 Annexation. For so long as Declarant has authority to appoint and remove members of the Board and officers of the Association, additional real property may be annexed to the

Property by the Declarant without the consent of the Class A Members. Such annexation shall be accomplished by filing in the Office of the Clerk of the Superior Court of Cobb County an approved subdivision plat describing the real property to be annexed to the Property and by including on such subdivision plat a statement that expressly sets forth the Declarant's intention to make such annexed real property subject to the provisions of this Declaration; or filing an amendment to the Declaration which has been consented to by the owners of the real property to be annexed if such real property is owned by someone other than Declarant. At the expiration of Declarant's right to appoint and remove members of the Board and officers of the Association, no real property may be annexed to the Property unless such annexation is approved by a two-thirds (2/3) vote of the Members of the Association who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the provisions of the By-Laws of the Association.

10.02 Future Development. Notwithstanding any other provision contained herein to the contrary, and subject to applicable zoning regulations, Declarant shall have the right, for so long as Declarant has the authority to appoint and remove members of the Board and officers of the Association, to annex real property according to the procedure set forth in Section 10.1, which real property may be developed as commercial property, apartment complexes, condominiums, or attached townhomes. At the time of such annexation, Declarant shall determine in its sole absolute discretion the proportional share of the assessments payable by and the number of votes allocated to such property.

10.03 Withdrawal of Property. So long as it has a right to annex additional property pursuant to this Article X, the Declarant reserves the right to amend this Declaration for the purpose of removing any portion of the Property from the coverage of this Declaration, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Property. Such amendment shall not require the consent of any person other than the owner of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association's reasonable written consent shall be required prior to such withdrawal.

ARTICLE XI LIMITATIONS ON LIABILITY

11.01 Constituent Partners. Notwithstanding anything to the contrary in this Declaration, no present or future "Constituent Partner" in or agent of Declarant, nor any shareholder, officer, director, employee, trustee, beneficiary, or agent of any corporation or trust that is or becomes a Constituent Partner in Declarant, shall be personally liable, directly or indirectly,

under or in connection with this Declaration, or any instrument or certificate otherwise executed in connection with this Declaration, or any amendments or modifications to any of the foregoing made at any time or times, heretofore or hereafter; and each of the Owners and their respective successors and assignees waives, and does hereby waive, any such personal liability.

Neither the negative capital account or any Constituent Partner in Declarant, nor any obligation of any Constituent Partner in Declarant to restore a negative capital account, or to contribute capital to Declarant, or to any other Constituent Partner in Declarant, shall at any time be deemed to be the property or an asset of Declarant, or any such other Constituent assignees shall have any right to collect, enforce or proceed against or with respect to any such negative capital account or partner's obligation to restore or contribute).

Furthermore, each of the Owners and their respective successors and assignees releases Declarant from, and does hereby waive, any obligations, debts, liabilities, claims, costs, expenses, damages, and losses, to the extent covered or reimbursed by insurance.

As used in this Article, a "Constituent Partner" in Declarant shall mean any direct partner in Declarant and any person or entity that is a partner in any partnership that, directly or indirectly through one or more other partnerships, is a partner in Declarant.

11.02 Builder Performance. Neither Declarant, nor any "Affiliate" of Declarant, as hereinafter defined, are a co-venturer, partner, agent, employer, stockholder or affiliate of any kind of or with any Builder, nor is any Builder an agent of Declarant or an Affiliate of Declarant. Therefore, Declarant and Affiliates of Declarant shall not be responsible for, or guarantors of, performance by any Builder of all or any of its obligations to any Owner pursuant to any contracts for the sale of a Residence or the construction of any Structure on a Lot or otherwise. Neither Declarant nor any Affiliates of Declarant has made, or have made, any warranty or representation with respect to performance by any Builder under any contract or otherwise.

Such Owner acknowledges and agrees that neither Declarant nor any Affiliate of Declarant share any liability or obligation to Owner, related to or arising out of any contract with Builder or otherwise, by reason of any failure by a Builder fully and adequately to perform its obligations to Owner. Owner further acknowledges and agrees that Owner has not, in entering into any contract with a Builder, relied upon any representations, oral or written, of Declarant or any Affiliate of Declarant or any salesperson. "Affiliate," for purposes of this Article means a partner, director, subsidiary, shareholder, officer, employee, agent, co-venturer, executor, personal representative, trustee,

attorney, or a person or entity which (either directly or indirectly through one or more intermediaries), controls is in common control with or is controlled by, another person or entity, and any person or entity that is a director, trustee, officer, employee, agent, partner, shareholder, subsidiary or attorney of any of the foregoing. For the purposes of this definition, the term "control" means (a) legal or beneficial ownership of 10% or more of the voting interests of an entity, or (b) the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of voting securities, by contract or otherwise.

11.03 Excavation. All Owners are hereby placed on notice that Declarant, any Affiliate of Declarant, and/or its agents, contractors, subcontractors, licensees and other designees, successors or assignees, may be, from time to time, conducting excavation, construction and other activities within or in proximity to the Property. By the acceptance of a deed or other conveyance or Security deed, leasehold, license, easement or other interest, and by using any portion of the Property, each Owner automatically acknowledges, stipulates and agrees (a) that none of the aforesaid activities shall be deemed nuisances or noxious or offensive activities, under any applicable covenants or at law generally, (b) not to enter upon, or allow their children or other persons under their control or direction to enter upon (regardless of whether such entry is trespass or otherwise) any property within or in proximity to any portion of the Property where such activities are being conducted (even if not being actively conducted at the time of entry, such as at night or otherwise during non-working hours), (c) Declarant, any Affiliate of Declarant and all of their agents, contractors, subcontractors, licensees and other designees, successors and assignees, shall not be liable but, rather, shall be held harmless, for any and all losses, damages (compensatory, consequential, punitive or otherwise), injuries or deaths arising from or relating to the aforesaid activities, (d) any purchase or use of any portion of the Property has been and will be made with full knowledge of the foregoing.

11.04 Health, Safety and Welfare. No provision of the Declaration, the By-Laws or the Articles of Incorporation shall be interpreted as a representation or duty of the Declarant or the Association to provide for, protect or further the health, safety and welfare of the Owners.

ARTICLE XII DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

12.01 Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes. The Association, Declarant, all Persons subject to this Declaration, and any Person not otherwise

subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Property, and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other bound Party involving, arising out of or relating to (a) the use, sale, purchase, construction, improvement, maintenance, operation or marketing of the Property; (b) the interpretation, application or enforcement of this Declaration, the By-Laws, or the Articles of Incorporation, or any rules adopted by the Association; (c) the administration, operation, management, use or maintenance of the Association and its assets; or (d) the alleged negligent design, maintenance, development, improvement, construction or operation by Declarant of any portion of the Property (collectively, "Claims"), except for those Exempt Claims described in Section 12.02, shall be resolved using the procedures set forth in Section 12.03 in lieu of filing suit in any court or initiating proceedings before any administrative tribunal seeking redress or resolution of such Claim.

12.02 Exempt Claims. The following Claims ("Exempt Claims") shall be exempt from the provisions of Section 12.03:

(a) any suit by the Association against any Bound Party to enforce the provisions of Article IV (Assessments);

(b) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article V (Architectural Standards) and Article VI (Use Restrictions);

(c) any suit between Owners that does not include Declarant as a party thereto, if such suit asserts a Claim which would constitute a cause of action under the laws of the State of Georgia or the United States but does not or would not include or involve any claim, right, privilege, membership, or defense based on or arising from the Declaration, By-Laws, Articles or rules of the Association;

(d) any suit in which all indispensable parties are not Bound Parties;

(e) any suit which all the parties thereto agree to consider as an Exempt Claim;

(f) a construction defects claim which involves damages in excess of \$50,000.00 per Lot; and

(g) the submission to a court of any settlement as a settlement affecting a class if such a class settlement is reasonably necessary to resolve a dispute which would otherwise not be an Exempt Claim.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 12.03, but there shall be no obligation to do so. The submission of an Exempt Claim involving the Association to the alternative dispute resolution procedures of Section 12.03 shall require the approval of the Association.

12.03 Mandatory Procedures For All Other Claims. All Claims other than Exempt Claims shall be resolved using the following procedures:

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent"), other than an Exempt Claim, shall notify each Respondent in writing of the Claim (the "Notice"), stating plainly and concisely:

1. the nature of the Claim, including date, time, location, persons, involved, and Respondent's role in the Claim;
2. the basis of the Claim (i.e., the laws, regulations, contract, provisions of this Declaration, the By-Laws, the Articles or rules or other authority out of which the Claim arises);
3. what Claimant wants Respondent to do or not do to resolve the Claim; and
4. that Claimant will meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

(b) Negotiation.

1. Each Claimant and Respondent (the "Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.
2. Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the community.

(c) Mediation.

1. If the Parties do not resolve the Claim through negotiation within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 additional days within which to submit the Claim to mediation under the auspices of an independent dispute resolution center, the Neighborhood Justice Center of Atlanta, or such other independent agency providing similar services in the Metropolitan Atlanta, Georgia area upon which the Parties may mutually agree.
2. If Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.
3. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.
4. Each party shall, within 15 days of the Termination of Mediation, make a written offer of settlement in an effort to resolve the Claim. The Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent. The Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "taking nothing" Settlement Offer.

(d) Final and Binding Arbitration.

1. If the Parties do not agree in writing to accept either the Settlement Demand, the Settlement Offer, or otherwise resolve the Claim within 30 days of the Termination of Mediation, the Claimant shall have 15 additional days to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit "B" or the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.
2. This subsection (d) is an agreement of the Bound Parties to arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable arbitration laws of the State of Georgia. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Georgia.

12.04 Allocation of Costs of Resolving Claims.

(a) Each Party shall bear its own costs incurred prior to and during the proceedings described in Section 12.03(a), (b) and (c), including the fees of its attorney or other representative. Each Party shall share equally all charges rendered by the mediator(s) pursuant to Section 12.03(c).

(b) Each Party shall bear its own costs (including the fees of its attorney or other representative) incurred after the Termination of Mediation under Section 12.03(c) and shall share equally all costs of conducting the arbitration proceeding (collectively, "Post Mediation Costs"), except as otherwise provided in subsection 12.04(c).

(c) Claimant shall prepay to the arbitration panel the sum of \$2,000.00 to be applied toward payment of any Post-Mediation Costs of the Parties, and, in addition, shall advance all arbitration costs until an Award is made. If a Respondent brings a Claim (i.e., a counterclaim) against a Claimant, the arbitration panel may, upon request, order such Respondent to advance a portion of the arbitration costs. If an Award is equal to or more favorable to a Claimant than such Claimant's Settlement Demand, the arbitration panel may, in its discretion, add all or a portion of such Claimant's Post-Mediation Costs to the Award, and allocate such Costs to the Respondents in such

proportions as the arbitration panel deems appropriate. If an Award against a Respondent is equal to or less favorable to Claimant than such Respondent's Settlement Offer to that Claimant, the arbitration panel may, in its discretion, also award to such Respondent its Post-Mediation Costs, and allocate such Post-Mediation Costs to the Claimants in such proportions as the arbitration panel deems appropriate.

12.05 Enforcement of Resolution. After resolution of any Claim through negotiation, mediation or arbitration, in accordance with Section 12.03, if any Party fails to abide by the terms of any agreement or Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 12.03. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys fees and court costs.

12.06 Declarant's Right to Suspend or Terminate. So long Declarant retains the right to appoint officers and directors to the Board, Declarant shall retain the right, from time to time in its sole discretion, to suspend or terminate this Article as to any and all proceedings not yet underway, by recording a notice of such suspension or termination in the public records of the county where the Property is located as a supplement to this Declaration.

ARTICLE XIII MISCELLANEOUS

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

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

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

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

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

(a) Declarant: Arvida-Hickory Springs Partners
Limited Partnership
7900 Glades Road
Boca Raton, Florida 33434
Attn: General Counsel

With a copy to: Arvida-Hickory Springs Partners
Limited Partnership
9040 Roswell Road
Suite 550
Atlanta, GA 30350

With a copy to: Minkin & Snyder
One Buckhead Plaza
3060 Peachtree Road
Suite 1100
Atlanta, Georgia 30305
Attn: Sheri S. Labovitz, Esq.

(b) Owners: Each Owner's address as registered with the Association in accordance with the By-Laws.

Any written communication transmitted in accordance with this Section 13.05 shall be deemed received on the third (3rd) day following the day such written notice is deposited in the United States Mail.

13.06 Insurance.

(a) At all times during the term of this Declaration, the Association, its successors and assigns, shall be required to keep any and all recreational facilities and any other improvements located on the Common Property fully insured by a reputable insurance company authorized to transact business in the State of Georgia with (i) fire, vandalism, malicious mischief and extended coverage insurance in an amount adequate to cover the cost or replacement of such improvements in the event of loss of any and/or all of such improvements, fixtures and contents thereof; and (ii) public liability insurance in such amounts as shall be determined by the Board of Directors as appropriate for the type of recreational activities which shall be allowed on the Common Property. Any such policies

of insurance shall require that the certificate holders and insured be given thirty (30) days prior written notice of any cancellation of such policies.

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

Any damage or destruction shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least seventy-five percent (75%) of the total Association vote entitled to vote thereon, and, so long as the Declarant has the right to appoint and remove directors, the Declarant, otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed one hundred and twenty (120) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

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

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

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

13.07 Litigation. No judicial, arbitration or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of the Members holding 75% of the total number of votes in the Association. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article IV; (c) proceedings involving challenges to ad valorem taxation; (d) counterclaims and defenses brought by the Association in the proceedings instituted against it; or (e) actions brought by the Association against any contractor or vendor arising out of a contract for services or supplies between the Association and such contractor or vendor. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

13.08 Use of the Words "Hickory Springs". Hickory Springs ® is a registered trademark belonging to Declarant. No Person shall use the term "Hickory Springs" or any derivative in any printed or promotional material without the Declarant's prior written consent. However, Owners or Builders may use the terms "Hickory Springs" in printed or promotional matter where such term is used solely to specify that particular property is located within Hickory Springs. The Association also shall be entitled to use the words "Hickory Springs" in its name. Any use of the registered name "Hickory Springs" shall be in a manner in which proprietary rights to such name are protected.

13.09 Georgia Property Owners' Association Act. At such time as Declarant no longer owns any portion of the Property, or earlier with the express written consent of the Declarant, the Board, without the approval of the Owners, shall be authorized (but shall not be obligated) to amend this Declaration to bring the Declaration under the provisions of the Georgia Property Owners' Association Act.

13.10 No Liability. Declarant has, using best efforts and all due diligence, prepared and recorded this Declaration so that each and every Owner shall have the right and the power to enforce the terms and provisions of this Declaration against every other Owner. However, in the event that this Declaration is, for any reason whatsoever, unenforceable by an Owner (or any other person) in a court of law or otherwise, Declarant shall have no liability of any kind as a result of such

unenforceability, and each and every owner, by acceptance of a deed conveying a Lot, acknowledges that Declarant shall have no such liability.

ARTICLE XIV MORTGAGEE PROVISIONS

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

14.01 Notices of Action. An institutional holder, insurer, or guarantor of a first mortgage, who provides written request to the Association (such request to state the name and address of such holder, insurer, 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 Development or which affects any Lot on which there is a first mortgage held, insured, or guaranteed by such eligible holder:

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

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

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

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

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

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

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

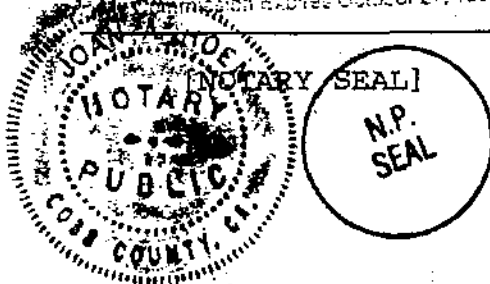
Signed, sealed and delivered
in the presence of:

[Signature]
Unofficial Witness

[Signature]
Notary Public

My Commission Expires On:

Notary Public, Cobb County, Georgia
My Commission Expires October 27, 1999



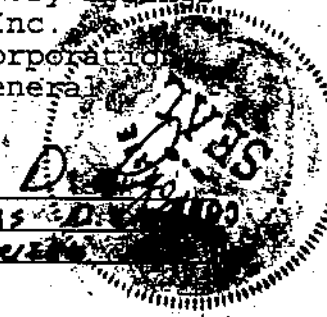
ARVIDA-HICKORY SPRINGS PARTNERS
LIMITED PARTNERSHIP, a Delaware
limited partnership

By: ARVIDA-HICKORY SPRINGS
MANAGERS, LIMITED
PARTNERSHIP, a Delaware
limited partnership, its
sole general partner

CORPORATE
SEAL

By: Arvida-Hickory Springs
Managers, Inc.
Delaware corporation,
its sole general
partner

By: [Signature]
Name: THOMAS D. [Signature]
Title: Attorney in Fact



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

IN WITNESS WHEREOF, the Association, acting through its
duly authorized officers, has caused this Declaration to be
executed and sealed this 20TH day of AUGUST 1999.

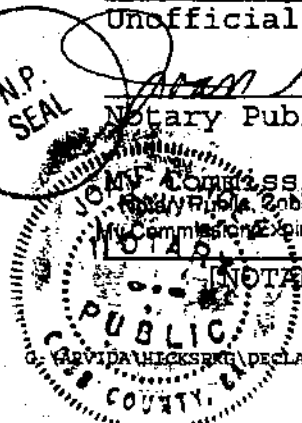
Signed, sealed and delivered
in the presence of:

[Signature]
Unofficial Witness

[Signature]
Notary Public

My Commission Expires On:

Notary Public, Cobb County, Georgia
My Commission Expires October 27, 1999



HICKORY SPRINGS HOMEOWNERS
ASSOCIATION, INC.

By: [Signature]
President

Attest: [Signature]
Secretary



CORPORATE
SEAL

EXHIBIT "A"

LEGAL DESCRIPTION

All that tract or parcel of land lying and being in Land Lots 262, 263 and 270 of the 20th District, Second Section, Cobb County, Georgia, and being more particularly described as follows:

TO FIND THE TRUE POINT OF BEGINNING, commence at a point at the intersection of Land Lots 232, 233, 263, and 262; run thence South $89^{\circ}35'38''$ West a distance of 1395.26 feet to a point; run thence South $04^{\circ}14'41''$ East a distance of 1113.44 feet to a point; run thence South $04^{\circ}15'47''$ East a distance of 448.75 feet to a point; run thence North $89^{\circ}59'16''$ East a distance of 611.26 feet to a point; run thence South $24^{\circ}08'48''$ West a distance of 558.49 feet to a point; run thence North $28^{\circ}41'51''$ East a distance of 208.16 feet to a point; run thence North $65^{\circ}58'22''$ East a distance of 370.72 feet; run thence South $28^{\circ}29'08''$ East a distance of 594.41 feet to a point on the northwestern right-of-way line of Hadaway Road, said point being the TRUE POINT OF BEGINNING.

From said TRUE POINT OF BEGINNING, as thus established and leaving said northwestern right-of-way of Hadaway Road, run North $28^{\circ}29'08''$ West a distance of 594.41 feet to a point; thence run South $65^{\circ}58'22''$ West a distance of 370.72 feet to a point; thence run North $28^{\circ}41'51''$ West a distance of 208.16 feet to a point; thence run North $09^{\circ}37'14''$ East, a distance of 72.05 feet to a point; thence, run North $48^{\circ}13'35''$ East, a distance of 169.58 feet to a point; thence run North $18^{\circ}27'41''$ East a distance of 227.07 feet to a point; thence run North $30^{\circ}49'15''$ East a distance of 222.79 feet to a point; thence run North $04^{\circ}01'36''$ West a distance of 94.06 feet to a point; thence run along the arc of a curve to the left an arc distance of 111.38 feet to a point (said curve having a radius of 225.00 feet and being subtended by a chord bearing North $83^{\circ}28'57''$ West, a chord distance of 110.25 feet); thence run South $06^{\circ}42'34''$ West a distance of 235.95 feet to a point; thence run North $59^{\circ}26'19''$ West a distance of 233.52 feet to a point; thence run North $33^{\circ}27'22''$ East a distance of 40.72 feet to a point; thence run North $38^{\circ}24'53''$ West a distance of 184.74 feet to a point; thence run North $54^{\circ}26'22''$ East a distance of 139.91 feet to a point; thence run North $17^{\circ}10'45''$ West a distance of 39.80 feet to a point; thence run North $78^{\circ}50'31''$ East a distance of 205.60 feet to a point; thence run South $05^{\circ}53'52''$ East a distance of 172.79 feet to a point; thence run along an arc of a curve to the right an arc distance of 89.84 feet to a point (said curve having a radius of 275.00 feet and being subtended by a chord bearing South $86^{\circ}47'27''$ East a chord distance of 89.45 feet); run thence North $12^{\circ}47'19''$ East a distance of 112.24 feet to a point; run thence North $47^{\circ}34'59''$ East a distance of 77.43 feet to a point; run thence North $80^{\circ}25'41''$ East a distance of 60.68 feet to a point; thence run South $54^{\circ}41'22''$ East a distance of 89.75 feet to a point; thence run South $53^{\circ}54'27''$ East a distance of 85.01 feet to a point; thence run South $58^{\circ}22'51''$ East a distance of 96.07 feet to a point; thence run South $72^{\circ}34'30''$ East a distance of 303.35 feet to a point; thence run South $51^{\circ}54'34''$ East a distance of 149.72 feet to a point; thence run North $38^{\circ}05'26''$ East a distance of 6.28 feet to a point; thence run along the arc of a curve to the right, an arc distance of 29.08 feet (said curve having a radius of 250 feet and being subtended by accord bearing South $41^{\circ}25'24''$ West a chord distance of 29.07 feet); thence run South $39^{\circ}40'22''$ East a distance of 260.33 feet to a point; run thence South $48^{\circ}18'00''$ West a distance of 92.89 feet to a point;

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thence run South 04°54'00" East a distance of 190.00 feet to a point; thence run South 33°48'00" East a distance of 220.00 feet to a point, thence run South 32°37'34" East a distance of 226.53 feet to a point along the northwestern right-of-way line of Hadaway Road, thence, run along the northwestern right-of-way line of Hadaway Road along the arc of a curve to the right an arc distance of 591.78 feet to a point (said curve having a radius of 1,330.43 feet and being subtended by a chord having a bearing of South 62°11'55" West, a chord distance of 586.91 feet); thence run South 74°56'26" West a distance of 95.70 feet to a point; thence running along a curve to the left an arc distance of 123.55 feet to a point (said curve having a radius of 1,942.12 feet and being subtended by a chord bearing South 73°07'05" West a distance of 123.53 feet), said point being the TRUE POINT OF BEGINNING.

The foregoing property contains 30.31 acres as described according to and particularly shown on that certain boundary survey prepared for Hickory Springs Unit I, dated September 2, 1997, prepared by Civil Design, Inc., and certified by John E. Didicher, Georgia Registered Land Surveyor No. 9302, which survey is incorporated herein by this reference and made a part of this description.

EXHIBIT "B"

RULES OF ARBITRATION

1. Claimant shall submit a Claim to arbitration under these Rules by giving written notice to all other Parties stating plainly and concisely the nature of the Claim, the remedy sought and Claimant's desire to submit the Claim to arbitration ("Arbitration Notice").

2. The Parties shall select arbitrators ("Party Appointed Arbitrators") as follows: all of the Claimants shall agree upon one (1) Party Appointed Arbitrator, and all of the Respondents shall agree upon one (1) Party Appointed Arbitrator. The Party Appointed Arbitrators shall, by agreement, select one (1) neutral arbitrator ("Neutral") so that the total arbitration panel ("Panel") has three (3) arbitrators.

3. If the arbitration panel is not selected under Rule 2 within 45 days from the date of the Arbitration Notice, Claimant may notify the chapter of The American Arbitration Association whose offices are closest to the Properties, or such other independent body providing arbitration services, which shall appoint one Neutral (Appointed Neutral"), notifying the Appointed Neutral and all Parties in writing of such appointment. The Appointed Neutral shall thereafter be the sole arbitrator, and any Party Appointed Arbitrators or their designees shall have no further duties involving the arbitration proceedings.

4. No person may serve as a Neutral in any arbitration under these Rules in which that person has any financial or personal interest in the result of the arbitration. Any person designated as a Neutral or Appointed Neutral shall immediately disclose in writing to all Parties any circumstance likely to affect impartiality, including any bias or financial or personal interest in the outcome of the arbitration ("Bias Disclosure"). If any party objects to the service of any Neutral or Appointed Neutral after receipt of the Neutral's Bias Disclosure, such Neutral or Appointed Neutral shall be replaced in the same manner in which that Neutral or Appointed Neutral was selected.

5. The Appointed Neutral or Neutral, as the case may be ("Arbitrator") shall fix the date, time and place for the hearing. The place of the hearing shall be within the Properties unless otherwise agreed by the Parties. In fixing the date of the hearing, or in continuing a hearing, the Appointed Neutral or Neutral shall take into consideration the appropriate amount of time which should pass in order to determine the Claimant's damages accurately.

6. Any Party may be represented by an attorney or other authorized representative throughout the arbitration proceedings.

7. All persons who, in the judgment of the Arbitrator, have a direct interest in the arbitration are entitled to attend hearings. The Arbitrator shall determine whether all indispensable parties are Bound Parties.

8. There shall be no stenographic record of the proceedings.

9. The hearing shall be conducted in whatever manner will, in the Arbitrator's judgment, most fairly and expeditiously permit the full presentation of the evidence and arguments of the Parties.

10. No formal discovery shall be conducted in the absence of express written agreement among all the Parties. The only evidence to be presented at the hearing shall be that which is disclosed to all Parties at least 30 days prior to the hearing; provided, however, no party shall deliberately withhold or refuse to disclose any evidence which is relevant and material to the Claim, and is not otherwise privileged. The Parties may offer such evidence as is relevant and material to the Claim, and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the Claim. The Arbitrator shall be the sole judge of the relevance and materiality of any evidence offered, and conformity to the legal rules of evidence shall not be necessary. The Arbitrator shall be authorized, but not required, to administer oaths to witnesses.

11. The Arbitrator shall declare the hearings closed when satisfied the record is complete.

12. There will be no posthearing briefs.

13. The Award shall be rendered immediately following the close of the hearing, if possible, and no later than 14 days from the close of the hearing, unless otherwise agreed by the Parties. The Award shall be in writing, shall be signed by the Arbitrator and acknowledged before a notary public. If the Arbitrator believes an opinion is necessary, it shall be in summary form.

14. If there is more than one arbitrator, all decisions of the Panel and the Award shall be by majority vote.

15. Each party agrees to accept as legal delivery of the Award the deposit of a true copy in the mail addressed to that Party or its attorney at the address communicated to the Arbitrator at the hearing.

16. If the Arbitrator decides that it has insufficient expertise to determine a relevant issue raised during arbitration, the arbitrator may retain the services of an independent licensed professional who will assist the Arbitrator in making the necessary determination. The scope of such professional's assistance shall be determined by the Arbitrator in the Arbitrator's discretion. Such independent professional must not have any bias, or financial or personal interest in the outcome of the arbitration, and shall

immediately notify the Parties of any such bias or interest by delivering a Bias Disclosure to the Parties. If any Party objects to the service of any professional after receipt of a Bias Disclosure, such professional shall be replaced by another independent licensed professional selected by the Arbitrator. The following is a nonexclusive list of the types of professionals that the Arbitrator may consider retaining for specific purposes.

(a) an engineer or architect for issues concerning the design, improvement, development, placement, maintenance, operation, siting, construction, furnishing or equipping of the Properties.

(b) an attorney for issues concerning the legal effect or validity of any of the Claims (including without limitation, questions about the legal standards to be applied as to standing, privity of contract, statute of limitations or laches, indispensability parties, failure to maintain, failure to mitigate damages, existence or non-existence of duty, foreseeability, comparative or contributory negligence, the effect of disclaimers or the interpretation of the Declaration as it applies to the Claims, and the reasonableness of attorney's fees);

(c) a certified public accountant who is a member of the Community Associations Institute for issues concerning Association finances including, without limitation, the Declarant's payment of assessments, any deficit funding obligations, the handling of reserves and the keeping of accounting records.

The Parties hereby instruct the Arbitrator to render such temporary decisions or order such temporary relief as may be necessary to prevent material lapses in the progress of development of any part of the Properties.

ARTICLE V
OFFICERS AND THEIR DUTIES

5.1 Enumeration of Offices. The officers of this Association shall be a president, who shall at all times be a member of the Board of Directors, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.

5.2 Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

5.3 Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless an officer shall sooner resign, or shall be removed, or otherwise disqualified to serve.

5.4 Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, having such authority, and perform such duties as the Board may, from time to time, determine.

5.5 Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of 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.

5.6 Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to fill such vacancy shall serve for the remainder of the term of the officer he replaces.

5.7 Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 5.4 of this Article.

5.8 Duties. The duties of the officers are as follows:

President

(a) The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments; and shall co-sign all checks and promissory notes.

Secretary

(b) The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses; and shall perform such other duties as required by the Board.

Treasurer

(c) The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; shall keep proper books of account; when directed by the Board, shall cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the Membership at its regular annual meeting, and deliver a copy of each to the Members.

ARTICLE VI SEAL

6.1 Corporation Seal. The corporate seal of the Association shall be in the following form, to wit:

and the seal in such form is hereby adopted as the corporate seal of the corporation.

ARTICLE VIII MISCELLANEOUS

7.1 The Declaration. All provisions contained in the Declaration with regard to rights, powers and duties of the Association, the Members thereof (including, without limitation, classes of Members and qualifications and rights of the Members of each class), and the Board of Directors thereof, are hereby incorporated into these By-Laws by this reference, with the same effect as if such provisions were fully set forth herein.

7.2 Committees. The Association shall appoint an Architectural Control Committee, as provided in the Declaration, and a nominating Committee, as provided in these By-Laws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purposes.

7.3 Books and Records. The books and records of the Association shall at all times, during reasonable business hours, be open for inspection by any Members of the Association.

7.4 Indemnification. The Association's directors, officers, employees and agents shall be entitled to the broadest indemnification authorized and permitted by Part 5, Section 14-3-850, et seq. of the Georgia Nonprofit Corporation Code or any act amending, supplementing or substituting therefor, which provisions are incorporated into these Bylaws by this reference.

7.5 Fiscal Year. The fiscal year of the Association shall be determined by resolution of the Board. In the absence of such a resolution, the fiscal year shall be the calendar year.

7.6 Parliamentary Rules. Robert Rules of Order (current Edition) shall govern the conduct of all Association proceedings, when not in conflict with Georgia law, the Articles of Incorporation, the Declaration, these By-Laws, or a ruling made by the person presiding over the proceeding.

7.7 Conflicts. If there are conflicts or inconsistencies between the provisions of Georgia law, the Articles of Incorporation, the Declaration, these By-Laws, then the provisions of Georgia law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

7.8 Notices. Unless otherwise specified in the Declaration, all notices, demands, bills, statements, or other communications required or permitted to be sent under the Declaration or these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by first class mail, postage prepaid:

(a) if to a Member, at the address that the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the last known address of the Member; or

(b) if to the Association, the Board of Directors, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated by notice in writing to the members.

If there are multiple Owners of a single piece of property, notice to One (1) shall be deemed notice to all.

7.9 Amendment. The provisions of the Declaration applicable to amendment of that instrument shall apply to any amendment to these By-Laws.

7.10 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) Demand. Written demand to cease and desist from an alleged violation shall be served upon the alleged violator specifying:

- (i) the alleged violation;
- (ii) the action required to abate the violation; and
- (iii) a time period, not less than ten (10) days, during which the violation may be abated without further sanction, if such violation is a continuing one, or a statement that any further violation of the same rule may result in the imposition of a fine, if the violation is not continuing. The Board or its designee may demand immediate abatement in such circumstances which, in the Board's determination, pose a danger to safety or property.

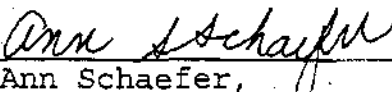
(b) Notices. Within twelve (12) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same rule is subsequently violated, the Board may, upon notice, impose a fine. The notice shall state:

- (i) the nature of the alleged violation;
- (ii) that the alleged violator may, within ten (10) days from the date of the notice, request a hearing regarding the fine;
- (iii) that any statement, evidence, and witnesses may be produced by the alleged violator at the hearing; and
- (iv) that all rights to have the fine reconsidered are waived if a hearing is not requested within ten (10) days of the date of the notice.

(c) Hearing. If a hearing is requested, it shall be held before the Board in executive session, and the alleged 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.

CERTIFICATION

The undersigned, being Secretary of HICKORY SPRINGS HOMEOWNERS ASSOCIATION, INC. hereby certifies that the foregoing By-Laws were duly adopted by the Board of Directors as of the 2nd day of October, 1997.



Ann Schaefer,
Secretary

