

DECLARATION OF PROTECTIVE COVENANTS AND PERMANENT MEMBERSHIP  
FOR WESTCHESTER COMMONS

WHEREAS, final Plats for Westchester Commons were recorded, respectively, as follows: (1) the Final Plat for Westchester Commons Unit One was recorded on April 19, 1989, in Plat Book 48, Page 128; (2) the Final Plat for Westchester Commons Unit Two was recorded on August 12, 1988, in Plat Book 46, Pages 66; (3) the Final Plat for Westchester Commons Unit Three was recorded on June 7, 1989, in Plat Book 48, Page 241; (4) the Final Plat for Westchester Commons Unit Four was recorded on February 12, 1990, in Plat Book 50, Page 160; (5) the Final Plat for Westchester Commons Unit Five was recorded on January 14, 1993, in Plat Book 57, Pages 292; and (6) the Final Plat for Westchester Commons Unit Six was recorded on January 28, 1993, in Plat Book 58, Pages 30 (hereinafter such Westchester Commons Plats being collectively referred to as the "Westchester Commons Plats"), each such Plat being recorded in the Gwinnett County, Georgia Records;

WHEREAS, Lot Owners at Westchester Commons in Gwinnett County, Georgia, who have executed this Declaration, are the Owners of that certain real property described in signature page(s) affixed hereto and as are listed on Exhibit "A" attached hereto and incorporated herein by reference and desire to subject their Lot and the Property to the terms and provisions of this Declaration of Protective Covenants and Permanent Membership for Westchester Commons ("Declaration"), and do hereby subject their Lot and the Property to continuing Permanent Membership in the Westchester Commons Swim & Tennis Association, Inc. ("Association") and authorize and direct the Board of Directors to subject the Common Property, as described in Exhibit "C" as attached hereto and incorporated herein by this reference, to the terms and provisions of this Declaration; and

WHEREAS, the undersigned officers of the Association desire to approve this Declaration and membership in the Association on behalf of the Association;

WHEREAS, the Lot Owners who have executed this Declaration do hereby consent, on behalf of such Owner, Owner's successors, successors-in-title, heirs, and assigns, that such Owner's Lot shall be owned, held, transferred, sold, conveyed, used, occupied, mortgaged, or otherwise encumbered subject to all of the terms, provisions, covenants, and restrictions contained in this Declaration, as a Permanent Member (as defined in the Declaration) of the Association (with the classification set forth on the signatory pages attached hereto), all of which shall run with the title to Owner's Lot and shall be binding upon all persons having any right, title, or interest in Owner's Lot, their respective heirs, legal representatives, successors, successors-in-title, and assigns. Each Owner understands and acknowledges that, by submitting Owner's Lot to Permanent Membership in the Association, each Owner is hereby subjecting Owner's Lot to mandatory assessments in favor of the Association, with lien rights afforded therefor, in accordance with the Declaration. Each Owner does further consent to the submission of the Common Property (as defined in the Declaration) to this Declaration; and

WHEREAS, these preambles have been incorporated into the Declaration;

NOW, THEREFORE, the undersigned officers of the Association, and all Lot Owners who have executed this Declaration, hereby declare that all of the Property described herein and in Exhibit "A" and Exhibit "C" shall be held, sold and conveyed subject to this Declaration, which is for the purpose of enhancing and protecting the desirability and attractiveness of, and which shall run with, the Property, and be binding on all parties having any right, title or interest in the Property or any part thereof, and shall, subject to all limitations herein provided, inure to the benefit of each Owner of any portion of the Property, his heirs, grantees, distributees, successors, successors-in-title and assigns and to the benefit of the Association:

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**Return to:** Weissman, Nowack, Curry & Wilco, P.C.  
1349 West Peachtree Street, 15th Floor  
Atlanta, Georgia 30309 (JMH)

**Instructions to Clerk: Cross-Reference to Deed  
Books set forth below; Index each signatory in Grantor Index; Index  
Westchester Commons Swim & Tennis Association, Inc.  
in Grantor and Grantee Indexes**

**The Common Property (Exhibit "C") and all Lots are located in  
Land Lots 128 and 129, 7<sup>th</sup> District,  
Gwinnett County, Georgia**

**Cross-Reference: Plat Book 48  
Page 128  
Plat Book 46  
Page 66  
Plat Book 48  
Page 241**

**STATE OF GEORGIA  
COUNTY OF GWINNETT**

**Plat Book 50  
  
Page 160  
Plat Book 57  
Page 292  
Plat Book 58  
Page 30**

<p><b>DECLARATION OF PROTECTIVE COVENANTS AND PERMANENT MEMBERSHIP FOR WESTCHESTER COMMONS</b></p>
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DECLARATION OF PROTECTIVE COVENANTS AND PERMANENT  
MEMBERSHIP FOR WESTCHESTER COMMONS

1. NAME.

The name of the Property is Westchester Commons, which Property is a residential property owners development which hereby submits to the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, et seq.

2. DEFINITIONS.

Generally, terms used in this Declaration, the Bylaws, and the Articles of Incorporation shall have their normal, generally accepted meanings or the meanings given in the Act or the Georgia Nonprofit Corporation Code. Unless the context otherwise requires, certain terms used in this Declaration shall be defined as set forth in Exhibit "B" attached hereto and incorporated herein by this reference.

3. LOCATION, PROPERTY DESCRIPTION, AND PLATS.

The Property subject to this Declaration and the Act is located in Land Lots 128 and 129 of the 7<sup>th</sup> District, Gwinnett County, Georgia, being more particularly described in the signatory portion of this Declaration and in Exhibits "A" and "C" attached to this Declaration, which exhibits are specifically incorporated herein by this reference. For purposes of property description and submission of the Owner Lots set forth herein only, the Westchester Commons Plats are incorporated herein by reference as fully as if the same were set forth in their entirety herein.

4. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS.

(a) Effective Date. Owners may submit their Lots to the terms of this Declaration without payment of an initiation fee during the Enrollment Period, which period shall close at 11:59 p.m. EST on March 31, 2002. The Association shall have the right, but not the obligation, to extend said Enrollment Period. This Declaration shall not be effective, whether or not it is recorded, until and unless: (a) this Declaration and the signature pages attached hereto have been recorded in the Gwinnett County, Georgia land records, and (b) at least one hundred seventy-six (176) Owners have executed this Declaration as Recreational or Neighborhood Members on or before March 31, 2002 (the "Enrollment Period"); and (c) the Association, acting by and through its Board of Directors has determined, in its discretion, to record this Declaration and the Exhibits thereto, such determination being conclusively illustrated by execution of this Declaration by two Association officers. Any reduction in membership after the recording of this Declaration, for any reason whatsoever, shall not effect the validity of this Declaration. Submission of portions of the Additional Property, upgrading (converting) of membership classification may be accomplished by the recording of a consent form at any time and from time to time subsequent to the recording of this Declaration, subject to the terms of this Declaration, provided, the Board shall have the discretion to accept such additional consent forms, if at all, on such terms and form as they determine in their discretion and such consent forms shall be valid only if executed by at least one officer of the Association and recorded by the Association. A sample consent form (which may be varied by the Association) is attached hereto as Exhibit "D" and incorporated herein by this reference.

(b) Membership Categories.

(i) Recreational Member. Each Person who is the record owner of a fee or undivided fee interest in any Lot, and whose Lot is submitted to Recreational Membership in the Association by execution hereof or by a consent form (as set forth above) recorded in the Gwinnett County, Georgia land records, shall be a Recreational Member of the Association and shall be entitled to vote as set forth herein and in the Bylaws of the Association. Recreational Membership shall be appurtenant to and may not be separated from ownership of any such Member Lot.

(ii) Neighborhood Member. Each Person who is the record owner of a fee or undivided fee interest in any Lot, and whose Lot is submitted to Neighborhood Membership in the Association by execution hereof or by a consent form (as set forth above) recorded in the Gwinnett County, Georgia land records, shall be a Neighborhood Member of the Association. Neighborhood Members shall not be entitled to vote on matters other than amendments to

this Declaration (as further set forth herein). Neighborhood Membership shall be appurtenant to and may not be separated from ownership of any such Member Lot.

A Neighborhood Member shall have the right, but not the obligation, to convert to Recreational Membership in the manner described in subsection (a) above. A Neighborhood Member who converts to Recreational Membership shall not be subject to payment of an initiation fee. Also, yearly use passes for the Recreational Facilities may be offered in the discretion of the Board to Neighborhood Members at a cost of 150% of the Recreational Member annual assessment.

**NOTICE: UPON CONVEYANCE OR TRANSFER OF A LOT WHOSE OWNER HAS EXECUTED THIS DECLARATION SUBJECTING SUCH OWNER'S LOT TO NEIGHBORHOOD MEMBERSHIP, SUCH LOT SHALL AUTOMATICALLY CONVERT, AT THE TIME OF SUCH CONVEYANCE OR TRANSFER, TO RECREATIONAL MEMBERSHIP AND SHALL BE SUBJECT TO THE RIGHTS, DUTIES AND OBLIGATIONS OF RECREATIONAL MEMBERSHIP, BUT SHALL NOT BE SUBJECT TO PAYMENT OF AN INITIATION FEE. THIS DECLARATION SHALL SERVE AS RECORD NOTICE OF SUCH CONVERSION FROM NEIGHBORHOOD TO RECREATIONAL MEMBERSHIP AND NO FURTHER NOTICE SHALL BE REQUIRED.**

The foregoing definitions of membership are not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate an Owner's membership. No Owner, whether one or more Persons, shall have more than one (1) membership per Lot owned. In the event of multiple Owners of a Lot, votes and rights of use and enjoyment shall be as provided in this Declaration and in the Bylaws. Any rights and privileges of membership, including the right to vote and to hold office, may be exercised by a Member or the Member's spouse, but in no event shall more than one (1) vote be cast nor office held for each Lot owned.

(c) Recreational Facilities. Recreational Members shall be entitled to the use of all Association recreational facilities including the swimming pool, playground, tennis courts, basketball court and related facilities, subject to this Declaration, the Bylaws and the rules and regulations of the Association. Neighborhood Members shall be entitled to use the playground and basketball court and to attend Board designated community-wide social functions. Neighborhood Members shall have no rights of use of the swimming pool and related facilities, or the tennis courts and related facilities, except as specifically provided by the Board or if they have purchased a yearly use pass.

(d) General Provisions. Persons who reside with Member(s) or are tenants of the Member have the same privileges to use the Common Property of the Association as the Member and shall be subject to all restrictions governing the Common Property.

(e) Voting. Recreational Members shall be entitled to one (1) equal vote for each Member Lot owned. When more than one (1) Person holds an ownership interest in any such Member Lot, the vote for such Member Lot shall be exercised as those Owners determine among themselves and advise the Secretary prior to any meeting. In the absence of such advice, the Member Lot's vote shall be suspended in the event more than one (1) Person seeks to exercise it. Neighborhood Members shall not be entitled to vote on any matter except as otherwise provided for herein.

## 5. ASSOCIATION RIGHTS AND RESTRICTIONS.

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

(a) to make and to enforce reasonable rules and regulations governing the use of the Common Property in accordance with this Declaration and the Bylaws;

(b) to enforce the provisions of this Declaration, the Bylaws and any rules and regulations provisions concerning the Common Property by imposing reasonable monetary fines, by using self-help and suspending use and voting privileges and services paid for as a Common Expense, as provided herein and in Section 44-3-223 of the Act and by any other legal or equitable means. This Declaration shall not be limited by Westchester Commons Plats. Any fines

imposed shall be considered an assessment against the Member Lot. In case of any conflict between this Declaration and the Westchester Commons Plats, this Declaration shall control;

(c) to control, manage, operate, maintain, replace and, in the Board's discretion, improve all portions of the Common Property and Association Easements for which the Association is assigned maintenance responsibility under this Declaration;

(d) to determine, in its discretion, the terms of use of the Common Property by Neighborhood Members;

(e) to grant permits, licenses, utility easements, and other easements, permits, public rights-of-way or licenses necessary for the proper maintenance or operation of the Common Property and Association Easements under, through, or over the Common Property, as may be reasonably necessary to or desirable for the ongoing development and operation of the Common Property;

(f) to deal with the Common Property in the event of damage or destruction as a result of casualty loss, condemnation or eminent domain, in accordance with the provisions of this Declaration;

(g) to represent the Members in dealing with governmental entities as to the Common Property and other matters;

(h) to acquire, hold and dispose of tangible and intangible personal property and real property; and

(i) the Board of Directors shall have the power to assess specially pursuant to this Paragraph and to Section 44-3-225(a) of the Act as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Paragraph 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 do so in the future.

## 6. MAINTENANCE RESPONSIBILITY

(a) Association's Responsibility. The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair, and replacement subject to any insurance then in effect, of all landscaping grass areas, paving and other improvements situated on the Common Property. The Association shall also maintain and keep in good repair all water and sewer pipes or facilities which serve the Common Property, to the extent that such pipes and facilities are not maintained by public, private, or municipal utility companies.

The foregoing maintenance shall be performed consistent with the Community-Wide Standard. The Association shall have the right, but not the obligation, to maintain public rights of way adjacent to the Property and other property not owned by the Association if the Board determines that such maintenance would benefit the Property.

(b) Member's Responsibility. Each Owner of a Member Lot shall maintain and keep his or her Lot and dwelling in good repair, condition and order. In addition, each Member shall maintain any public right of way located between his or her Lot and the curb of the street(s) bordering such Lot. Such maintenance shall be performed consistent with this Declaration and the Community-Wide Standard established pursuant hereto. Each Member shall perform his or her responsibility hereunder in such manner so as not to unreasonably disturb other Lot Owners.

The Association shall not be liable for injury or damage to person or property caused by the elements or by the Owner of any Lot, or any other person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Common Property or from any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder. The Association shall not be liable to the Owner of any Lot or such Owner's Occupant, guest, or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Property. The Association shall not be liable to any Owner, or any Owner's Occupant, guest or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Paragraph where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. No diminution or abatement of assessments shall be

claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

(c) Failure to Maintain. If the Board determines that any Member has failed or refused to discharge properly his or her obligation with regard to the maintenance, repair, or replacement of items of which he or she is responsible hereunder, then, the Association shall give the Member written notice of the Member's failure or refusal and of the Association's right to provide necessary maintenance, repair, or replacement at the Member's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board.

Unless the Board determines that an emergency exists, the Member shall have ten (10) days within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten (10) days. If the Board determines that: (i) an emergency exists or (ii) that an Member has not complied with the demand given by the Association as herein provided; then the Association may provide any such maintenance, repair, or replacement at the Member's sole cost and expense, and such costs shall be an assessment and lien against the Member and the Lot. If, during the course of performing its maintenance responsibilities hereunder, the Association discovers that maintenance, repair or replacement is required of an item which is the Member's responsibility, and such maintenance, repair or replacement must be performed for the Association to properly complete its maintenance project, then the Association may perform such work on behalf of the Member and at the Member's expense, without prior notice to the Member, such being deemed an emergency situation hereunder.

If the Board determines that the need for maintenance or repair is in the Area of Common Responsibility and is caused through the willful or negligent act of any Member or Occupant or their family, guests, lessees, or invitees, then the Association may assess the cost of any such maintenance, repair, or replacement against the Member's or Occupant's Lot, which shall become a lien against the Lot and shall be collected as provided herein for the collection of assessments.

## 7. ASSESSMENTS.

(a) General. The Association shall have the power to levy assessments or dues against all Members as provided herein and in the Bylaws. The assessments for Common Expenses provided for herein shall be used for the general purposes of maintaining, repairing, replacing, insuring, managing, operating and, in the Board's discretion, improving the Common Property and Association Easements, enforcing this Declaration, paying for utility services serving the Common Property and Easements, maintaining a reserve fund for future Common Property and Easement maintenance, repairs or improvements, and promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Members and Occupants of Member Lots in the Property, as may be more specifically authorized from time to time by the Board. Except as otherwise provided herein, each Recreational Member Lot is hereby allocated equal liability for Common Expenses with each Recreational Member Lot, which need not be equal with that of other membership categories. Except as otherwise provided herein, each Neighborhood Member Lot is hereby allocated equal liability for Common Expenses with each Neighborhood Member Lot, which need not be equal with that of other membership categories.

(b) Recreational and Neighborhood Members: Creation of the Lien and Personal Obligation For Assessments. Each Permanent Member, by execution hereof or by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments (dues) or charges; (ii) special assessments, such assessments to be established and collected as hereinafter provided; and (iii) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration.

All such assessments, together with charges, interest, costs, and reasonable attorney's fees actually incurred, in the maximum amount permitted under the Act, shall be a charge on such Member Lot and shall be a continuing lien upon the Member Lot against which each assessment is made. Such amounts shall also be the personal obligation of the Person who was the Owner of such Member Lot at the time when the assessment fell due. Each Owner of a Member Lot

and his or her grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance.

The lien provided for herein shall have priority as set forth in the Act. The sale or transfer of any Member Lot pursuant to foreclosure of a first Mortgage shall extinguish the lien for assessments as to payments coming due prior to such sale or transfer. No sale or transfer shall relieve such Member Lot from liability for any assessments thereafter coming due or from the lien thereof.

(c) Delinquent Assessments as to all Members. All assessments and related charges not paid on or before the due date established by the Board shall be delinquent, and the Member shall be in default.

(i) If the annual assessments or any part or installment thereof is not paid in full within thirty (30) days of the due date, a late charge equal to the greater of ten (\$10.00) dollars or ten (10%) percent of the amount not paid may be imposed without further notice or warning to the delinquent Member, and interest at the highest rate permitted under the Act shall accrue from the due date.

(ii) The Association, acting through the Board, may suspend the Member's right to use the Common Property if amounts remain unpaid for more than thirty (30) days, and institute suit to collect all amounts due pursuant to the provisions of the Declaration, the Bylaws, and the Act, if the amounts remain unpaid for more than sixty (60) days.

(iii) If part payment of assessments and related charges is made, the amount received shall be applied first to costs and attorneys fees, as applicable, and then, in order, to late charges, interest, delinquent assessments, and current assessments.

(iv) No Member may exempt himself or herself from liability for or otherwise withhold payment of assessments for any reason whatsoever.

(d) Maximum Assessments; Computation of Operating Budget and Assessment. The annual assessment for Recreational and Neighborhood Members during fiscal year 2002 shall be three hundred dollars (\$300.00) for Recreational Members and seventy-five dollars (\$75.00) for Neighborhood Members and no further vote shall be required as to such assessment.

The annual assessment shall be established pursuant to a budget created and adopted by the Board, covering the estimated costs of maintaining and operating the Common Property and otherwise operating the Property during the coming year. The budget and notice of assessment shall be sent or delivered to each Member at least thirty (30) days prior to the due date of the annual assessment. The budget shall include amounts to cover anticipated Common Expenses of operating, maintaining, repairing, improving and managing all of the Common Property and Association Easements, including insurance, legal, accounting and other professional fees, landscaping costs, and a reserve or capital contribution related to maintenance, repair, improvement and operation of the Common Property and Easements. The Permanent Member assessment shall be determined from the budget prepared by the Board.

(e) Special Assessments. Notwithstanding anything in Paragraph 7(d) to the contrary, in addition to the annual assessment provided for above, the Board may at any time levy a special assessment for any purpose against all Permanent Members, notice of which shall be sent to such members; provided, however, prior to becoming effective, any special assessment first shall be approved by the affirmative vote of at least two-thirds (2/3) of eligible Permanent Members present or represented by proxy at a duly called meeting, notice of which shall specify that purpose, and/or by ballot or consent specifying that purpose.

(f) Capital Budget and Reserve Contribution. As part of the annual budget and assessment, the Board may fix and establish an annual reserve or capital contribution, in an amount sufficient to permit meeting the projected capital and future needs of the Association.

(g) Statement of Account. Any Member, Mortgage holder, or a Person having executed a contract for the purchase of a Member Lot, or a lender considering a loan to be secured by a Member Lot, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments due and unpaid, including any late charges, interest, fines, or other charges against a Member Lot. The Association shall respond in writing within five (5)

days of receipt of the request for a statement; provided, however, the Association may require the payment of a fee, not exceeding ten (\$10.00) dollars, or such higher amount as authorized by the Act, as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Member Lot as of the date specified therein.

(h) Initiation/Capital Fund Fee. Subsequent to the Enrollment Period ending on March 31, 2002, the Board may require a non-refundable initiation/capital fund fee in order to become a Permanent Member, which fee shall be five hundred and No/100 Dollars (\$500.00). The Board shall have the right (subject to such restrictions as the Board may require), but not the obligation, to provide for variations in the initiation fee for financial hardship and/or inability of the Association to contact an Owner during the Enrollment Period.

## 8. ARCHITECTURAL CONTROLS.

(a) Architectural Standards. Except as provided herein, no Member, Occupant of a Member Lot, or any other person may make any encroachment onto the Common Property, or make any exterior change, alteration, or construction (including painting and landscaping), nor erect, place or post any object, sign, clothesline, playground equipment, light (except for reasonable seasonal decorative lights displayed between Thanksgiving and January 15), storm door or window, artificial vegetation, exterior sculpture, fountains, flags, or other thing on the exterior of the buildings, in any windows (including the interior of windows which are visible from the exterior), or on any Common Property, without first obtaining the written approval of the Architectural Control Committee ("ACC"). The standard for approval of such improvements shall include, but not be limited to, aesthetic consideration, materials to be used, harmony with the external design of the existing buildings, Lots and structures, and the location in relation to surrounding structures and topography.

Applications for approval of any such architectural modification shall be in writing and shall provide such information as the ACC may reasonably require. The ACC or its designated representative shall be the sole arbiter of such application and may withhold approval for any reason, including purely aesthetic considerations, and the Association, acting through the Board, shall be entitled to stop any construction which is not in conformance with approved plans. The Board or the ACC may publish written architectural standards for exterior and Common Property alterations or additions, and any request in substantial compliance therewith shall be approved; provided, however, each such requested change shall be in harmony with the external design of the existing buildings and Lots and the location in relation to surrounding structures and topography of the vicinity.

The ACC or the Board, subject to this subparagraph (a), may allow such encroachments on the Common Property as it deems acceptable.

If the ACC or its designated representative fails to approve or to disapprove such application within forty-five (45) days after the application and such information as the ACC may reasonably require shall have been submitted, its approval will not be required and this subparagraph will be deemed complied with, unless such structure or improvement otherwise is in violation of the Declaration, the Bylaws, the design standards, the Association's rules and regulations, or applicable zoning ordinances.

(b) Architectural Control Committee. The Architectural Control Committee shall constitute a standing committee of the Association. The ACC shall consist of the Board unless the Board delegates to other Persons the authority to serve on the ACC. At all times, however, the chairperson of the ACC shall be a Board member. The ACC shall have the authority to select and employ professional consultants to assist it in discharging its duties, the cost of such consultants to be paid by the Member for which plans and specifications have been submitted for approval. The Member shall be responsible for paying the full costs of each review, whether or not submitted plans and specifications are approved by the ACC, and the ACC may require payment of all such costs prior to approval of plans and specifications. The ACC also may charge reasonable fees to cover the cost of review or inspections performed hereunder, and any such fees shall be published in the design standards.

(c) Condition of Approval. As a condition of approval for a requested architectural change, modification, addition or alteration, a Member, on behalf of himself or herself and his or her successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance to and on such change, modification, addition or alteration. In the discretion of the Board or the ACC, a Member may be made to verify

such condition of approval by written instrument in recordable form acknowledged by such Member on behalf of himself or herself and all successors-in-interest.

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

(e) No Waiver of Future Approvals. Each Member acknowledges that the members of the Board and the ACC will change from time to time and that interpretation, application and enforcement of the architectural standards may vary accordingly. The approval of either the Board or the ACC of any proposals, plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval of the Board or the ACC, shall not constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

(f) Enforcement. Any construction, alteration or other work done in violation of this Paragraph, the Declaration, the Bylaws, the design standards or any applicable zoning regulations shall be deemed to be nonconforming. Upon written request from the Board, a violating Member shall, at his or her own cost and expense, remove such nonconforming construction, alteration or other work and restore the property to substantially the same condition as existed prior to such construction, alteration or work. Should the Member fail to do so, the Board or its designees shall have the right, in addition to all other available remedies, to enter the property, remove the violation and restore the property, or obtain a court order compelling the violating Member to do so. All costs thereof, including reasonable attorney's fees, may be assessed against such Lot.

In addition to the above, the Board shall have the authority and standing, on behalf of the Association, to impose reasonable fines and to pursue all legal and equitable remedies available to enforce the provisions of this Paragraph and its decisions or those of the ACC. All costs of any such action, including reasonable attorney's fees, may be assessed against such Lot. Furthermore, the Board shall have the authority to record in the Gwinnett County land records notices of violation of the provisions of this Paragraph.

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

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

## 9. USE RESTRICTIONS.

Each Member shall be responsible for ensuring that the Member's family, guests, tenants and Occupants comply with all provisions of this Declaration, the Bylaws and the rules and regulations of the Association. Furthermore, each Member and Occupant of a Member Lot shall always endeavor to observe and promote the cooperative purposes for which the Association was established. In addition to any rights the Association may have against the Member's family, guests, tenants or Occupants, the Association may take action under this Declaration

against the Member as if the Member committed the violation in conjunction with the Member's family, guests, tenants or Occupants.

All Persons entitled to enforce any covenants or restrictions, including, but not limited to those use restrictions which existed prior to the recording of this Declaration, shall be entitled to continue to do so.

Use restrictions regarding use of Lots and the Common Property are as follows and also as may be adopted by the Board in accordance with the terms hereof and as specified in the Bylaws.

(a) Use of Lots.

(i) Residential Use. Each Lot shall be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Lot or any part of the Property, including business uses ancillary to a primary residential use, except that the Owner or Occupant residing in a dwelling on a Member Lot may conduct such ancillary business activities within that dwelling so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from the exterior of the dwelling; (b) the business activity does not involve visitation of the Lot by employees, clients, customers, suppliers or other business invitees; provided, however, this provision shall not preclude delivery of materials or items by United States Postal delivery or by other customary parcel delivery services (U.P.S., Federal Express, etc.); (c) the business activity conforms to all zoning requirements for the Property; (d) the business activity does not increase traffic in the Property; (e) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage; and (f) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the Board's sole discretion.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the use of a Lot by an on-site management company operating on behalf of the Association shall not be considered a trade or business within the meaning of this subparagraph.

(ii) Number of Occupants. The maximum number of occupants in a dwelling on a Lot shall be limited to two (2) people per bedroom in the dwelling. "Occupancy," for purposes hereof, shall be defined as staying overnight in a dwelling for a total of more than thirty (30) days, either consecutive or nonconsecutive, in any calendar year. This occupancy restriction shall not apply to require the removal of any person lawfully occupying a dwelling on the Effective Date hereof. Upon written application, the Board shall grant variances to this restriction to comply with provisions of the Fair Housing Amendments Act of 1988 or any amendments thereto.

If an Owner of a Lot is a corporation, partnership, trust or other legal entity not being a natural person, the entity shall designate in writing to the Board the name(s) of the person(s) who will occupy the dwelling on the Lot. The designated person(s) to occupy the dwelling may not be changed more frequently than once every six (6) months.

(b) Subdivision of Lots and Outbuildings. No Lot may be subdivided into a smaller Lot and no structure of a temporary character, trailer, tent, shack, carport, garage, barn or other outbuilding shall be erected or used by any Owner or Occupant of a Member Lot on any portion of the Property, at any time, either temporarily or permanently, except with written Board approval. Any outbuilding constructed on a Lot prior to the Effective Date hereof shall be grandfathered in by this clause and granted approval as long as such outbuilding is well maintained in accordance with this Declaration.

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

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

(d) Prohibition of Damage, Nuisance and Noise. Without prior written Board consent, nothing shall be done or kept on the Property or any part thereof which would increase the rate of insurance on the Property or any Lot or part thereof, which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body, or which would increase the Common Expenses.

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

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

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

(f) Pets. No Owner or Occupant of a Member Lot may keep any pets other than a reasonable number of generally recognized household pets on any portion of the Property, as determined in the Board's discretion .

No Owner or Occupant of a Member Lot may keep, breed or maintain any pet for any commercial purpose. Pets may not be left unattended outdoors. Dogs must be kept on a leash and be under the physical control of a responsible person at all times while outdoors in unfenced areas. No structure for the care, housing, or confinement of any pet shall be constructed or maintained on any part of the Property without prior written Board approval as provided in Paragraph 8 hereof. Feces left by pets upon the Common Property, on any Lot or in any dwelling, including the pet owner's Lot or dwelling, must be removed promptly by the owner of the pet or the person responsible for the pet.

No potbellied pigs may be brought onto or kept at the Property at any time. No dogs determined in the sole discretion of the Board to be dangerous dogs may be brought onto or kept on the Property at any time by any Member, Occupant, or guest of an Owner or Occupant of a Member Lot. Any pet which endangers the health of any Owner or Occupant of any Member Lot or which creates a nuisance or unreasonable disturbance, as may be determined in the Board's sole discretion, must be permanently removed from the Property upon seven (7) days' written notice by the Board. If the Owner or Occupant fails to comply with such notice, the Board may remove the

pet and/or obtain a court order requiring the Owner or Occupant to do so. Any pet which, in the Board's sole discretion, presents an immediate danger to the health, safety or property of any member of the community may be removed by the Board without prior notice to the pet's owner.

Any Owner or Occupant of a Member Lot who keeps or maintains any pet on any portion of the Properties shall be deemed to have indemnified and agreed to hold the Association, its directors, officers, and agents free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the Properties.

(g) Parking. No Owner or Occupant of a Member Lot may keep or bring onto the Property more than a reasonable number of vehicles per Lot at any time, as determined by the Board; provided, however, the Board may adopt reasonable rules limiting the number of vehicles which may be parked at the Property. Vehicles may only be parked in driveways and garages or other areas authorized in writing by the Board. No vehicle may be parked on a Lot's lawn.

Disabled and stored vehicles are prohibited from being parked on the Property, except in garages. For purposes of this subparagraph, a vehicle shall be considered "disabled" if it does not have a current license tag or is obviously inoperable. A vehicle shall be considered "stored" if it remains on the Property, other than in a garage, for fourteen (14) consecutive days or longer without prior written Board permission.

Boats, trailers, trucks with a load capacity of one (1) ton or more, full-size vans (excluding mini-vans or utility vehicles used as passenger vehicles), recreational vehicles (RV's and motor homes), vehicles used primarily for commercial purposes and containing visible evidence of commercial use (such as tool boxes or tool racks), and vehicles with commercial writings on their exteriors are also prohibited from being parked on the Property or neighborhood streets, except in driveways or garages. Notwithstanding the above, trucks, vans, commercial vehicles and vehicles with commercial writings on their exteriors shall be allowed temporarily on the Common Property during normal business hours for the purpose of serving any Lot or the Common Property; provided, that, without the written consent of the Board, no such vehicle shall be authorized to remain on the Common Property overnight or for any purpose except serving a Lot or the Common Property.

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

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

(h) Abandoned Personal Property. Personal property, other than an automobile as provided for in subparagraph (g) of this Paragraph, is prohibited from being stored, kept, or allowed to remain for a period of more than twenty-four (24) hours upon any portion of the Common Property without prior written Board permission. If the Board determines that a violation exists, then, not less than two (2) days after written notice is placed on the personal property and/or on the front door of the property owner's dwelling, if known, the Board may remove and either discard or store the personal property in a location which the Board may determine. The notice shall include the name and telephone number of the person or entity which will remove the property and the name and telephone number of a person to

contact regarding the alleged violation.

The Board, in its discretion, may determine that an emergency situation exists and may exercise its removal rights hereunder without prior notice to the property owner; provided, however, in such case, the Board shall give the property owner, if known, notice of the removal of the property and the location of the property within three (3) days after the property is removed.

Neither the Association nor any officer or agent thereof shall be liable to any person for any claim of damage resulting from the removal activity in accordance herewith. The Board may elect to impose fines or use other available remedies, rather than exercise its authority to remove property hereunder.

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

(j) Rubbish, Trash, and Garbage. All rubbish, trash, and garbage shall be regularly removed from the Lot and shall not be allowed to accumulate therein. Rubbish, trash, and garbage shall be disposed of in appropriate sealed bags and placed in proper receptacles for collection. Trash and garbage containers shall not be permitted to remain in public view except on days of trash collection. Any other items intended for disposal such as building materials or equipment shall not be permitted to remain on a Lot for more than 24 hours. Storage of any other items not intended for disposal shall be within the confines of the back yard of a dwelling behind the house. No garbage or trash shall be placed on the Common Property, temporarily or otherwise, except as provided herein. Trash, refuse or other waste materials shall not be burned, and incinerators manufactured or designed for the burning of trash, garbage or waste materials shall not be placed or operated on the Property.

(k) Impairment of Dwellings and Easements. An Owner of a Member Lot shall do no act nor any work that will impair the structural soundness or integrity of another dwelling or impair any easement or hereditaments, nor do any act nor allow any condition to exist which will adversely affect the other Lots or their Owners or Occupants.

(l) Unightly or Unkempt Conditions. The pursuit of hobbies or other activities, including, but not limited to the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Property. Clothing, bedding, rugs, mops, appliances, indoor furniture, and other household items shall not be placed or stored outside the dwelling. Only appropriate outdoor items, such as neatly stacked firewood, patio furniture, grills, and bicycles may be kept on the patio or deck serving the Lot.

(m) Garage Sales. The Board shall have the authority to restrict or impose reasonable conditions on any garage or yard sales or other similar activity.

(n) Antennas and Satellite Dishes. No transmission antenna, of any kind, may be erected anywhere on the Property without written approval of the Board of Directors or the Architectural Control Committee. No direct broadcast satellite (DBS) antenna or multi-channel multi-point distribution service (MMDS) larger than one meter in diameter shall be placed, allowed, or maintained upon any portion of the Property, including a Lot. DBS and MMDS antennas one meter or less in diameter and television broadcast service antennas may only be installed in accordance with Federal Communication Commission (FCC) rules and the rules and regulations of the Association authorized by the FCC, both as may be amended from time to time. Such items shall be installed in the least conspicuous location available on the Lot which permits reception of an acceptable signal. Except as provided by this Section, no antenna or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained outdoors on any portion of the Property, whether attached to a home or structure or otherwise; provided, however, that the Association shall have the right to erect, construct and maintain such devices.

(o) Fences and Walls. No chain link fences shall be allowed. All other fences or walls must be approved by the Board of Directors in accordance with Paragraph 8 hereinabove. Any fence or wall erected prior to the Effective Date hereof shall be grandfathered in by this clause and granted approval as long as it is well maintained in accordance with this Declaration. All fences and walls shall be maintained in a structurally sound condition and kept in good repair. Fences shall be kept free from loose or rotting materials and shall have braces and supports attached or fastened to them in accordance with common building practices.

(p) Lawns. All lawns must be maintained and kept free from weeds or other uncultivated vegetation. Owners must keep the grass on their Lot mowed so that it never exceeds six (6) inches in height.

(q) Trees. Any dead, dying, damaged or diseased tree which is poses a danger to person or property shall not be allowed to remain on any Lot. A finding by a registered forester or certified arborist that a tree poses such a threat shall constitute prima-facie evidence that a tree is hazardous and the tree must be removed at the Owner's sole expense. Tree stumps greater than 12 inches in height above ground level shall not be allowed to remain on any Lot for more than 30 days after a tree has been cut. Fallen trees, slash, tree limbs or any other fallen or removed parts of a tree shall not be allowed to remain on a Lot for more than 30 days. Notwithstanding this restriction, cut wood which is neatly stacked and maintained in length not to exceed three (3) feet may be allowed on Lots.

10. INSURANCE.

(a) The Association's Board or its duly authorized agent shall have the authority to and, if reasonably available, shall obtain insurance for all insurable improvements on the Common Property. This insurance shall include fire and extended coverage, including coverage for vandalism and malicious mischief and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

(b) The Board shall obtain a public liability policy applicable to the Common Property covering the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents in their capacities as such, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least One Million (\$1,000,000.00) Dollars.

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

(d) All such insurance coverage obtained by the Board shall be written in the name of the Association, as trustee, for the benefit of the Association and its members.

(e) The Board, in its reasonable discretion, also may maintain as a Common Expense a fidelity bond or similar coverage on directors, officers, employees or other Persons handling or responsible for the Association's funds, in an amount determined in the Board's business judgment.

11. REPAIR AND RECONSTRUCTION.

In the event of damage to or destruction of all or any part of the Common Property as a result of fire or other casualty, unless eighty (80%) percent of the Permanent Members vote not to proceed with the reconstruction and repair of the structure, the Board or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the structure.

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

(b) Source and Allocation of Proceeds. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair, as determined by the Board, or if at any time during the reconstruction and repair or upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, a special assessment shall be made against all of the Permanent Members without the necessity of a vote of the Permanent Members or compliance with Paragraph 7 above, provided the assessment for each category of Permanent Membership shall be determined as follows: the total assessment shall be allocated by multiplying the total assessment by a fraction, the numerator of which shall be the then current yearly assessment for a category of Permanent Membership and the denominator of which shall be the total of the yearly assessment of the two (2) categories of Permanent Members; the respective result of which shall be split pro rata over the membership of each respective category of Permanent Membership. If after repair and reconstruction is completed there is a surplus of funds, such funds shall be common funds of the Association to be used as directed by the Board.

(c) Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the plans and specifications under which the Common Property was originally constructed, except where changes are necessary to comply with current applicable building codes.

(d) Construction Fund. The net proceeds of the insurance collected on account of a casualty and the funds collected by the Association from assessments against Permanent Members on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair in the manner set forth in

this Paragraph to be disbursed by the Association in appropriate progress payments to such contractor(s), supplier(s), and personnel performing the work or supplying materials or services for the repair and reconstruction of the buildings as are designated by the Board.

## 12. MORTGAGEE'S RIGHTS

(a) Mortgagee Approval of Actions. Unless at least two-thirds (2/3) of either the holders of first Mortgages on Member Lots or the Member Lot Owners give their consent, the Association shall not:

- i) by act or omission seek to abandon or terminate the Association;
- ii) change the pro rata interest or obligations of any individual Member Lot for the purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards;
- iii) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Property (the granting of utility or public easements or rights-of-way shall not be deemed a transfer within the meaning of this provision); or
- iv) use hazard insurance proceeds for losses to any portion of the Common Property for other than the repair, replacement, or reconstruction of such portion of the Common Property.

(b) Mortgagee Assessments Upon Foreclosure of Member Lot. Where the Mortgagee holding a first Mortgage of record on a Member Lot or other purchaser of a Member Lot obtains title pursuant to judicial or nonjudicial foreclosure of the Mortgage, it shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Lot which became due prior to such acquisition of title. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from all Members, including such acquirer, its successors and assigns. Additionally, such acquirer shall be responsible for all charges accruing subsequent to the passage of title, including, but not limited to, all charges for the month in which title is passed.

(c) Mortgagee Notices. Upon written request to the Association, identifying the name and address of the holder and the Lot number or address, any Eligible Mortgage Holder of a Member Lot will be entitled to timely written notice of:

- i) any condemnation loss or any casualty loss which affects a material portion of the Common Property or any Lot on which there is a first Mortgage held by such Eligible Mortgage Holder;
- ii) any delinquency in the payment of assessments or charges owed by an Owner of a Member Lot subject to a first Mortgage held by such Eligible Mortgage Holder which remains unsatisfied for a period of sixty (60) days, and any default in the performance by an individual Lot Owner of any other obligation under the Declaration or bylaws which is not cured within sixty (60) days;
- iii) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or
- iv) any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders, as specified herein.

Any holder of a first Mortgage on a Member Lot shall be entitled, upon written request, to receive within a reasonable time after request, a copy of the financial statement of the Association for the immediately preceding fiscal year, free of charge to the Mortgagee so requesting.

## 13. ENFORCEMENT.

(a) Authority and Enforcement. The Common Property and Member Lots shall be used only for those uses and purposes set out in this Declaration. Copies of all rules and regulations shall be furnished to all Members and Occupants

of Member Lots. Any rule or regulation may be repealed by the affirmative vote or written consent of a Majority of the total Association vote at an annual or special meeting of the membership.

Every Member and Occupant, shall strictly comply with the Declaration, Bylaws and rules and regulations of the Association, and any lack of compliance shall entitle the Association and, in an appropriate case, one or more aggrieved Member Lot Owners, to take action to enforce the terms of the Declaration, Bylaws or rules and regulations through any legal or equitable remedy. The Member shall be responsible for the Association's reasonable attorney's fees actually incurred in enforcing the Declaration.

The Board shall have the power to impose reasonable fines against Members, which shall, as to a Permanent Member, constitute a lien upon the Member Lot, and to suspend a Member's right to vote or to use the Common Property for violation of any duty imposed under this Declaration, the Bylaws, or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Association or the Board of Directors to limit ingress and egress to or from a Member Lot. If any Occupant violates the Declaration, Bylaws or Association rules and a fine is imposed, the fine may be imposed against the Member and/or Occupant. The failure of the Board to enforce any provision of the Declaration, Bylaws, or any rule or regulation shall not be deemed a waiver of the right of the Board to do so thereafter.

(b) Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Association, acting through the Board, may elect to enforce any provision of the Declaration, the Bylaws, or the rules and regulations by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity for compliance with the procedure set forth in the Bylaws.

The Association or its duly authorized agent shall have the power to enter upon any portion of the Property and Common Property to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates the Declaration, the Bylaws, or the rules and regulations. All costs of self-help or of otherwise enforcing the Declaration, Bylaws or Association rules, including the Association's reasonable attorney's fees actually incurred, shall be assessed against the violating Member.

Each Member shall be responsible for ensuring that the Member's family, guests, tenants and occupants comply with all provisions of this Declaration, the Bylaws and the rules and regulations of the Association. In addition to any rights the Association may have against the Member's family, guests, tenants or occupants, the Association may take action under this Declaration against the Member as if the Member committed the violation in conjunction with the Member's family, guests, tenants or Occupants.

#### 14. EASEMENT.

Every Permanent Member shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to his or her Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any portion of the Common Property, to limit the number of guests of Members and tenants who may use the Common Property, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by a Member, his or her family, tenants, guests, and invitees;

(b) the right of the Association to suspend the voting rights of any Member and the right of a Member to use any portion of the Common Property for any period during which any assessment against his or her Lot which is provided for herein remains unpaid and for a reasonable period of time for an infraction of the Declaration, Bylaws, or rules and regulations;

(c) the right of the Association to borrow money as may be set forth in the Bylaws;

(d) the right of the Association to grant permits, licenses or easements across the Common Property, as authorized in this Declaration or the Bylaws; and

(e) the right of the Association to dedicate or transfer all or any portion of the Common Property subject to such conditions as may be agreed to by the members of the Association.

Any Member may delegate his or her right of use and enjoyment in and to the Common Property and facilities located thereon to the members of his or her family, his or her tenants and guests; provided such guests may not be residents of Westchester Commons who are not Members. Each Member shall be deemed to have made a delegation of all such rights to the Occupants of his or her Lot, if leased.

15. GENERAL PROVISIONS.

(a) Security. The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve safety on the Property; however, each Member, for himself or herself and his or her Occupants, tenants, guests, licensees, and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security on the Property or elsewhere. It shall be the responsibility of each Member to protect his or her person and property and all responsibility to provide security shall lie solely with each Member and/or Occupant. The Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

(b) Submission of Common Property. The Common Property owned by the Association shall be deemed submitted to this Declaration pursuant to execution of this Declaration by the Association.

(c) Indemnification. The Association shall indemnify every officer and director against any and all expenses, including, without limitation, attorney's fees, imposed upon or reasonably incurred by any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which such officer or director may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

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

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

(f) Restrictive Covenants. The original Declaration of Covenants recorded at Deed Book 5410, Page 30 and Deed Book 7958, Page 236 of the Gwinnett County land records and the plats of survey related to the Property also recorded in the Gwinnett County, Georgia land records set forth certain restrictive covenants affecting the Lots. Such covenants shall run to the benefit of, and be enforceable by the Association, and, in an appropriate case, an aggrieved Lot Owner. Each Permanent Member hereby consents to extension of such covenants in accordance with the provisions of O.C.G.A. § 44-5-60(d)(1) and (2). However, where those covenants conflict with or are inconsistent with this Declaration, this Declaration shall prevail.

(g) Dispute Resolution. All Members must give written notice to the Board requesting a hearing with the Board and attend such hearing to discuss amicable resolution of any dispute and submit the dispute to formal mediation before the Member files any lawsuit against the Association, the Board, any officer or director, or the property manager of the Association. The Member shall, in such notice and at the hearing and the mediation session, make a good faith

effort to explain the grievance to the Board and resolve the dispute in an amicable fashion, and shall give the Board a reasonable opportunity to address the Member's grievance before filing suit. Upon receiving a request for a hearing, the Board shall give notice of the date, time and place of the hearing to the person requesting the hearing. The Board shall schedule this hearing for a date not less than seven (7) nor more than twenty-one (21) days from the date of receipt of the notice of hearing from the person requesting the hearing. If mediation is required, the mediation shall be conducted in accordance with the Mediation Rules of the Superior Court of Gwinnett County and the parties shall share the costs equally.

16. AMENDMENTS.

Except where a higher vote is required for action under any other provisions of this Declaration, in which case such higher vote shall be necessary to amend such provision, this Declaration may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the Permanent Members of the Association holding sixty-six and two-thirds (66 2/3%) percent of the total eligible vote thereof; provided, as to any matter which materially alters or increases the assessment obligation of any Permanent Members, then such amendment shall also require the affirmative vote, written consent or any combination thereof of sixty-six and two-thirds (66 2/3%) percent of the total eligible vote of such affected category of members. Notice of a meeting, if any, at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. No amendment shall be effective until certified by the President and Secretary of the Association and recorded in the Gwinnett County, Georgia land records.

In addition to the above, amendments to this Declaration which materially affect the rights of Eligible Mortgage Holders must be approved by Eligible Mortgage Holders who represent at least fifty-one (51%) percent of the votes of Member Lots that are subject to Mortgages held by Eligible Mortgage Holders. Notwithstanding the above, the approval of any proposed amendment by an Eligible Mortgage Holder shall be deemed implied and consented to if the Eligible Mortgage Holder fails to submit a response to any written proposal for an amendment within thirty (30) days after the Eligible Mortgage Holder receives notice of the proposed amendment sent by certified or registered mail, return receipt requested.

Notwithstanding the foregoing, the Board of Directors, without the necessity of a vote from the Permanent Members, may amend this Declaration to comply with the Act, any applicable state, city or federal law, including but not limited to, compliance with applicable guidelines of the Federal National Mortgage Association ("Fannie Mae"), the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA").

Any action to challenge the validity of an amendment adopted under this Paragraph must be brought within one (1) year of the effective date of such amendment. No action to challenge such amendment may be brought after such time. The preambles to this Declaration are incorporated herein by this reference.

17. SEVERABILITY.

Invalidation of any one of these covenants or restrictions by judgment or court order or otherwise shall in no way affect the application of such provision to other circumstances or affect any other provision(s), which shall remain in full force and effect.

18. DURATION.

The covenants and restrictions of this Declaration shall run with and bind the Property perpetually to the extent provided in the Act.

Notwithstanding anything herein to the contrary, neither (1) the foreclosure of one or more Member Lots subsequent to the recording of this Declaration, nor (2) the execution of one or more consents in a defective manner, nor (3) that as a result of foreclosure and/or defective execution, there are less than one hundred seventy-six (176) Permanent Members at any time or from time to time, shall effect the validity and enforceability of this Declaration.

19. BYLAWS AND ARTICLES OF INCORPORATION.

Each Person who executes this Declaration also agrees and consents to the Amended and Restated Bylaws for Westchester Commons Swim & Tennis Association, Inc. and the Amended and Restated Articles of Incorporation for Westchester Commons Swim & Tennis Association, Inc. The Amended and Restated Bylaws for the Westchester Commons Swim & Tennis Association, Inc., as voted upon by the membership during the enrollment period, shall be effective upon the recording of this Declaration.

20. PREPARER

This Declaration was prepared by Julie McGhee Howard, Weissman, Nowack, Curry & Wilco, P.C., 1349 West Peachtree Street, 15th Floor, Atlanta, Georgia 30309; (404) 885-9215; Email: [juliehoward@wncwlaw.com](mailto:juliehoward@wncwlaw.com)

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Board of Directors and undersigned Owners of Lots as set forth below have approved recording of this Declaration of Protective Covenants and Permanent Membership for Westchester Commons and the signature pages to follow:

**WESTCHESTER COMMONS SWIM & TENNIS  
ASSOCIATION, INC.**

By: \_\_\_\_\_  
President

Attest: \_\_\_\_\_  
Secretary

[CORPORATE SEAL]

Signed, sealed, and delivered this  
\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Notary Public  
My Commission Expires:

\_\_\_\_\_  
[NOTARY SEAL]

[Additional signatory to Declaration]

The undersigned owner(s) is/are the record owner and holder of title in fee simple to a Lot within Westchester Commons in Gwinnett County, Georgia, located at the address described below, and more particularly shown as Lot \_\_\_\_\_, Block \_\_\_\_\_, Unit \_\_\_\_\_, located in Land Lot(s) \_\_\_\_\_, of the 7<sup>th</sup> District, Gwinnett County, Georgia and as shown on the plat of survey for Westchester Commons recorded in Plat Book \_\_\_\_\_, Page \_\_\_\_\_, Gwinnett County, Georgia records such plat being incorporated herein by this reference. Owner(s) hereby consents to the Declaration of Protective Covenants and Permanent Membership for Westchester Commons and to the passage of the Amended and Restated Bylaws of the Westchester Commons Swim & Tennis Association, Inc. and the Articles of Amendment for Westchester Commons Swim & Tennis Association, Inc. which amend and restate the Association's Articles of Incorporation.

Owner(s) shall be a \_\_\_\_\_ Member of the Association.  
(Recreational or Neighborhood)

Signed, sealed and delivered

\_\_\_\_\_  
this \_\_\_\_ day of \_\_\_\_\_, Signature of Owner  
2001.

\_\_\_\_\_  
Witness Print or Type Full Name of Owner

\_\_\_\_\_  
Notary Public Street Address  
[NOTARY SEAL]

Signed, sealed and delivered

\_\_\_\_\_  
this \_\_\_\_ day of \_\_\_\_\_, Signature of Co-Owner, if any  
2001.

\_\_\_\_\_  
Witness Print or Type Full Name of Co-Owner

\_\_\_\_\_  
Notary Public  
[NOTARY SEAL]

[Signatures continue on following page]

## EXHIBIT "B"

### DEFINITIONS.

- (a) Act means the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, et seq., as may be amended.
- (b) Additional Property means all lots shown on the Westchester Commons Subdivision Plats which have not submitted to the terms and provisions of this Declaration at the time of initial recording of this Declaration, shall, upon execution of a consent in accordance with terms of this Declaration, become a portion of the Property..
- (c) Articles or Articles of Incorporation mean the Articles of Incorporation of Westchester Commons Swim & Tennis Association, Inc., filed with the Secretary of State of the State of Georgia, as amended.
- (d) Association means Westchester Commons Swim & Tennis Association, Inc., a Georgia nonprofit corporation, its successors or assigns.
- (e) Association Legal Instruments means this Declaration and all exhibits hereto and the Westchester Commons Subdivision Plats, all as may be supplemented or amended.
- (f) Board or Board of Directors means the elected body responsible for management and operation of the Association.
- (g) Bylaws mean the Amended and Restated Bylaws of Westchester Commons Swim & Tennis Association, Inc.
- (h) Neighborhood Member means a Lot Owner whose Lot has been subjected to Permanent Membership in the Association by signature hereto or by written consent recorded in the Gwinnett County, Georgia land records, as provided in this Declaration, and which Lot therefore is a portion of the Property.
- (i) Common Expenses mean the expenses anticipated or actually incurred by the Association in maintaining, repairing, replacing, and operating the Common Property and otherwise for the benefit of all Member Lots.
- (j) Common Property means all property owned, maintained or operated by the Association for the common benefit of the Members, including, but not limited to, tennis courts, playground, swimming pool, club house, parking areas, and associated facilities, shrubbery and landscaping.
- (k) Westchester Commons means all lots shown on the Westchester Commons Subdivision Plats.
- (l) Effective Date means the date as is further defined in Paragraph 3 hereof
- (m) Eligible Mortgage Holder means a holder of a first mortgage secured by a Member Lot who has requested, in writing, notice of certain items as set forth herein.
- (m) Enrollment Period means the time during which owners may submit their Lots to the terms of this Declaration without payment of an initiation fee pursuant to Paragraph 4 hereof.
- (n) Recreational Member means a Lot Owner whose Lot has been subjected to Permanent Membership in the Association by signature hereto or by written consent recorded in the Gwinnett County, Georgia land records, as provided in this Declaration, and which Lot therefore is a portion of the Property.
- (o) Lot means a portion of the Property or the Additional Property intended for ownership and use as a single-family dwelling site as permitted in this Declaration and as shown on the plats for the Property or the Additional Property, or amendments or supplements thereto, recorded in the Gwinnett County, Georgia land records.

(p) Majority means those eligible votes, Owners, or other group as the context may indicate totaling more than fifty (50%) percent of the total eligible number.

(q) Member means a Lot Owner whose Lot has been either subjected to Recreational or Neighborhood Membership in the Association by execution hereof or by written consent recorded in the Gwinnett County, Georgia land records, as provided herein, and which Lot therefore is a portion of the Property.

(r) Member Lot means a Lot subjected pursuant to this Declaration to Recreational Membership or Neighborhood Membership in the Association.

(s) Mortgage means any mortgage, deed to secure debt, deed of trust, or other transfer or conveyance for the purpose of securing the performance of an obligation, including, but not limited to, a transfer or conveyance of fee title for such purpose.

(t) Mortgagee or Mortgage Holder means the holder of any Mortgage.

(u) Occupant means any Person occupying all or any portion of a dwelling or other property located within the Property for any period of time, regardless of whether such Person is a tenant or the Owner of such property.

(v) Officer means an individual who is elected by the Board to serve as President, Vice President, Secretary, or Treasurer, or such other subordinate officers as the Board may determine necessary.

(w) Owner means the record titleholder of a Lot within the Westchester Commons, but shall not include a Mortgage Holder of the Lot.

(x) Permanent Members shall mean the Recreational or Neighborhood Members.

(y) Permanent Membership means a membership in the Association which is permanent and mandatory and which cannot be separated from a Lot, but rather is appurtenant to and runs with title to a Lot by virtue of submission or written consent, recorded in the Gwinnett County, Georgia land records as provided herein with such rights, duties and privileges as set forth in this Declaration.

(z) Person means any individual, corporation, firm, association, partnership, trust, or other legal entity.

(aa) Property means that real estate which is submitted to the Act and the provisions of this Declaration at the time of recording of this Declaration, being the Member Lots as submitted to this Declaration and the Property as described in Exhibit "C" attached hereto and incorporated herein by reference, and any portion of the Additional Property as later submitted. The Property includes the Common Property. The Property is a residential property owners development which hereby submits to the Georgia Property Owners' Association Act, O.C.G.A. § 44-3-220, et seq., as may be amended.





**EXHIBIT "C"**

Description of Common Property

The Common Property is that certain parcel of land located in Land Lot 129 of the 7<sup>th</sup> District of Gwinnett County, Georgia, as the same is more particularly described in that certain Warranty Deed between Rudy Bowen, Inc. and Westchester Commons Swim & Tennis, Inc., dated May 1, 1990, as filed and recorded on May 25, 1990 in Deed Book 6038, Pages 308-309, Gwinnett County, Georgia land records.

**EXHIBIT "D"**

STATE OF GEORGIA  
COUNTY OF GWINNETT

Index in Grantor Index Owner's Name(s): \_\_\_\_\_

Index in Grantor and Grantee Index Also Under:  
Westchester Commons Swim & Tennis Association, Inc.

Cross Reference to Owner's Deed: Deed Book \_\_\_\_\_  
Page \_\_\_\_\_

Cross Reference to Westchester Commons Declaration: Deed Book \_\_\_\_\_  
Page \_\_\_\_\_  
Plat Book \_\_\_\_\_  
Page \_\_\_\_\_

**CONSENT FORM TO THE DECLARATION OF PROTECTIVE COVENANTS AND PERMANENT MEMBERSHIP  
FOR WESTCHESTER COMMONS AND OWNER SUBMISSION TO MEMBERSHIP IN  
WESTCHESTER COMMONS SWIM & TENNIS ASSOCIATION, INC.**

WHEREAS, the undersigned owner(s) (hereinafter referred to as "Owner") is the record owner and holder of title in fee simple to a Lot within the Westchester Commons in Gwinnett County, Georgia, located at the address described below, and more particularly shown as Lot \_\_\_\_, Block \_\_\_\_, Unit \_\_\_\_, as located in Land Lot(s) \_\_\_\_\_, 7<sup>th</sup> District of Gwinnett County, Georgia as shown on the plat of survey for Westchester Commons recorded in Plat Book \_\_\_\_, Page \_\_\_\_, Gwinnett County, Georgia records (hereinafter "Owner's Property") such plat being incorporated herein by this reference; and

WHEREAS, Owner desires to submit and/or convert Owner's Property to the Declaration of Protective Covenants and Permanent Membership for Westchester Commons as recorded at Deed Book \_\_\_\_, Page \_\_\_\_ et seq. ("Declaration") as a Permanent Member of the Association, as defined in the Declaration in the category shown below;

NOW, THEREFORE, Owner does hereby consent, on behalf of Owner, Owner's successors, successors-in-title, heirs, and assigns, that from and after the date of this Consent, Owner's Property shall be owned, held, transferred, sold, conveyed, used, occupied, mortgaged, or otherwise encumbered subject to all of the terms, provisions, covenants, and restrictions contained in the Declaration, as a \_\_\_\_\_ Member of the Association, all of which shall run with the title to Owner's Property and shall be binding upon all persons having any right, title, or interest in Owner's Property, their respective heirs, legal representatives, successors, successors-in-title, and assigns. Owner understands and acknowledges that, by submitting Owner's Property to \_\_\_\_\_ Membership (as defined in the Declaration) in the Association, Owner is hereby subjecting Owner's Property to mandatory assessments in favor of the Association, with lien rights afforded therefor, in accordance with the Declaration.

Owner does further consent to the submission of the Common Property (as defined in the Declaration) to the Declaration.

Signed, sealed and delivered  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Signature of Owner

\_\_\_\_\_  
Print or Type Full Name of Owner(s)

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Signature of Co-Owner

\_\_\_\_\_  
Notary Public  
[NOTARY SEAL]

\_\_\_\_\_  
Street Address

***THIS PORTION TO BE COMPLETED BY ASSOCIATION UPON RETURN FROM OWNERS:***

*Signed, sealed, and delivered  
this \_\_ day of \_\_, 20\_\_*

***Approved by:  
WESTCHESTER COMMONS SWIM & TENNIS ASSOCIATION, INC.***

\_\_\_\_\_  
*Witness*

***By:*** \_\_\_\_\_

***President***  
***[CORPORATE SEAL]***

\_\_\_\_\_  
***Notary Public [NOTARY SEAL]***

**[For Subsequent Additions and Conversions]**