

FILED & RECORDED
FAYETTE COUNTY, GA.

'99 MAR 25 PM 12 53

W.A. BALLARD, CLERK

FINCHER & HECHT
L.L.C., attorneys at law

7193 Jonesboro Road, Park 54
Morrow, GA 30260

BOOK 1367 PAGE 302

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

FOR

SOUTH FORK

BY

**THOMAS F. YOUNG, III
POST OFFICE BOX 90790
EAST POINT, GEORGIA 30364**

**THIS INSTRUMENT ESTABLISHES
A MANDATORY MEMBERSHIP HOMEOWNER ASSOCIATION.**

Book: 1367 Page: 302 Seq: 1

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS
FOR
SOUTH FORK

ARTICLE 1 2
Definitions 2
1.1 Articles of Incorporation 2
1.2 Association 2
1.3 Board of Directors or Board 2
1.4 Bylaws 2
1.5 Common Property 2
1.6 Community 2
1.7 Community Wide Standard 2
1.8 Declarant 2
1.9 Lot 2
1.10 Mortgage 3
1.11 Mortgagee 3
1.12 Occupant 3
1.13 Owner 3
1.14 Person 3
1.15 Supplementary Declaration 3
1.16 Total Association Note 3
1.17 Sidewalks 3

ARTICLE 2 4
Property Subject to this Declaration 4
2.1 Property Hereby Subjected to this Declaration. 4
2.2 Unilateral Annexation by Declarant. 4
2.3 Additional Covenants, Restrictions and Easements. 4
2.4 Other Annexation 4

ARTICLE 3 5
Association Membership and Voting Rights 5
3.1 Membership. 5
3.2 Voting. 5
3.3 Notice of Sale, Lease or Acquisition. 5

ARTICLE 4 5
Assessments 5
4.1 Purpose of Assessments 5
4.2 Creation of the Lien and Personal Obligation for Assessments. 5

4.3	General Assessments.	6
4.4	Special Assessments	6
4.5	Specific Assessments.	6
4.6	Subordination of Liens to Mortgages.	7
4.7	Remedies of the Association.	7
4.8	Date of Commencement of Assessments.	8
4.9	Budget Deficit During Declarant Control	8
4.10	Failure to Assess.	8
4.11	Estoppel Letter.	8
ARTICLE 5		9
Maintenance of Common Property		9
5.1	Association's Responsibilities.	9
5.2	Owner's Responsibilities.	9
5.3	Conveyance of Common Property by Declarant to Association: No Implied Rights.	10
5.4	Partition.	10
5.5	Condemnation.	10
5.6	Liability.	10
ARTICLE 6		11
Architectural Standards		11
6.1	General.	11
6.2	Guidelines and Procedures.	11
6.3	Limitation of Liability.	12
6.4	No Waiver.	12
6.5	Variances.	12
6.6	Enforcement	13
6.7	Architectural Review Committee.	13
ARTICLE 7		14
Use Restrictions and Rules		14
7.1	Rules and Regulations.	14
7.2	Residential Use.	14
7.3	Leasing.	14
7.4	Signs.	14
7.5	Motor Vehicles, Trailer, Boats, Etc.	15
7.6	Garage	15
7.7	Animals and Pets.	15
7.8	Nuisance.	16
7.9	Unightly or Unkempt Conditions.	16
7.10	Antennas.	16
7.11	Tree Removal.	16
7.12	Drainage.	16
7.13	Sight Distance at Intersections.	17
7.14	Garbage Cans, Woodpiles, Etc.	17

7.15 Subdivision of Lot. 17

7.16 Sidewalks 17

7.17 Fences. 17

7.18 Utility Lines. 17

7.19 Air Conditioning Units. 17

7.20 Lighting. 17

7.21 Accessory Buildings, Sculpture, Flags. 17

7.22 Energy Conservation Equipment. 18

7.23 Swimming Pools. 18

7.24 Gardens, Play Equipment and Pools 18

7.25 Mailboxes. 18

7.26 Clotheslines. 18

7.27 Reserved. 18

7.28 Entry Features. 18

7.29 Wetlands and Streams 19

7.30 Lake Lots. 19

7.31 Stream Buffer. 19

ARTICLE 8 20

Insurance and Casualty Loss 20

8.1 Insurance on Common Property. 20

8.2 Individual Insurance. 20

8.3 Damage and Destruction – Insured by Association. 20

8.4 Damage and Destruction – Insured by Owners. 21

ARTICLE 9 21

Mortgagee Provisions 21

9.1 Notices of Action. 21

9.2 Audit. 22

9.3 No Priority. 22

9.4 VA/HUD Approval. 22

ARTICLE 10 22

Easements 22

10.1 General. 22

10.2 Easements for Use and Enjoyment. 22

10.3 Easements for Utilities. 23

10.4 Easement for Emergency Entry. 23

10.5 Easement for Maintenance. 24

10.6 Easement for Entry Features and Streetscapes. 24

10.7 Easement for Drainage. 24

10.8 Easement During Construction and Sale Period. 24

ARTICLE 11 25

Use of Recreational facilities by Non-Members 25

11.1	Rights Reserved by Declarant	25
11.2	Right and Easement of Use.	26
11.3	Remedy of Association Upon Failure to Pay User Fees.	26
11.4	Right of Association to Grant Nonmember Use Rights.	26
11.5	Capacity of Facilities.	26
ARTICLE 12		26
General Provisions		26
12.1	Enforcement.	26
12.2	Occupants Bound.	26
12.3	Self Help.	27
12.4	Duration.	27
12.5	Termination of Rights of Declarant.	27
12.6	Amendment.	27
12.7	Gender and Grammar.	28
12.8	Severability.	28
12.9	Captions.	28
12.10	No Merger	28
12.11	Reserved	28
12.12	Notices.	29
12.13	Perpetuities.	29
12.14	Indemnification.	29
12.15	Agreements	29
12.16	Variances	29
12.17	Litigation	30
12.18	Arbitration.	30
Exhibit "A"		31
Property Description		31
Exhibit "B"		32
Legal Description		32

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS
FOR
SOUTH FORK

THIS DECLARATION is made on the date hereinafter set forth by **Thomas F. Young, III**, a Georgia Limited Liability Company, hereinafter sometimes called **Declarant**.

WITNESSETH

WHEREAS, Declarant is the Owner of Real Property described in Exhibit "A" hereof;
and

WHEREAS, Declarant desires to subject property described in Exhibit "A" hereof to the provisions of this Declaration to create a residential Community of single family housing and to provide for the subjecting of other Real Property to the provisions of this Declaration;

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

BOOK 1367 PAGE 307

1

Book: 1367 Page: 302 Seq: 6

ARTICLE 1

BOOK 1367 PAGE 308

Definitions

1.1 **Articles of Incorporation** means the Articles of Incorporation of South Fork Community Association, Inc., filed with the Georgia Secretary of State and incorporated herein by this reference as may be amended from time to time.

1.2 **Association** means the South Fork Community Association, Inc., a Georgia non-profit corporation, its successors and assigns.

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

1.4 **Bylaws** means the Bylaws of South Fork Community Association, Inc., attached to this Declaration as Exhibit C and incorporated herein by this reference as may be amended from time to time.

1.5 **Common Property** means any and all Real and Personal Property, including without limitation, easements and other interests therein, and the facilities and improvements located thereon, now or hereafter owned by the Association for the use and enjoyment of the Owners.

1.6 **Community** refers to that certain real property described in "Exhibit A", attached hereto, and such additions thereto as may be made by Supplementary Declaration as provided herein.

1.7 **Community Wide Standard** means the standard of conduct, maintenance or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association. Such determination, however, must be consistent with the Community-Wide Standard originally established by Declarant.

1.8 **Declarant** means South Fork, LLC, a Georgia Limited Liability Company and its successors in title and assigns; provided that in a recorded instrument, such successor in title or assignee is designated as the Declarant by the then holder of all rights of the Declarant hereunder; and provided further, upon the effective date of the designation of a successor Declarant, all rights of the former Declarant in and to such status as Declarant shall cease so that there shall only be one holder of the rights of Declarant hereunder at any one point in time.

1.9 **Lot** means any plot of land within the Community, whether or not improvements are constructed thereon, which constitutes a single family dwelling site as shown on a plat recorded in the land records of the county where the Community is located. The ownership of each Lot shall include, and there shall automatically pass with the title to each Lot as an appurtenance thereto membership in the Association and all rights and interests of an Owner in the Common Property.

1.10 Mortgage means any and all instruments used for the purpose of encumbering Real Property in the Community as security for the payment or satisfaction of an obligation, including, without limitation, any mortgage, deed to secure debt, or deed of trust.

1.11 Mortgagee means the holder of a Mortgage.

1.12 Occupant means any Person occupying all or any portion of a Lot or other property located within the Community for any period of time, regardless of whether such Person is a tenant of the Owner of such property.

1.13 Owner means the record Owner, whether one or more Persons, of a fee simple title to any Lot, or, Apartment complex located within the Community, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of an obligation.

1.14 Person includes any individual, individual acting in a fiduciary capacity, corporation, Limited Liability Partnership, Limited Liability Company, General Partnership, Limited Partnership, Joint Venture, Joint Stock Company, Association, Company or other organization recognized as a legal Person under Georgia Law.

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

1.16 Total Association Votes means the votes attributable to the entire membership of the Association (including votes of the Declarant) as of the record date for such action, whether or not such members are present or represented at the meeting, if any, where such votes are to be cast. If a majority of the Total Association Vote is required to approve a particular matter under consideration by the Association, such matter must receive more than half of all the votes attributable to all existing members of the Association as of the record date for such action, whether or not such members are present or represented at the meeting, if any, where such votes are to be cast. As further illustration, if a majority vote is required to approve a matter (and the term Total Association Vote is not used), such matter must receive more than half of the votes cast by the majority entitled to vote on the matter.

1.17 Sidewalks means sidewalks which conform to the town of Tyrone Standards and Specifications and in no instance will sidewalks be of less thickness than the thickness of the driveways.

BOOK 1367 PAGE 309

ARTICLE 2

BOOK 1367 PAGE 310

Property Subject to this Declaration

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

2.2 Unilateral Annexation by Declarant. As the Owner thereof, or, if not the Owner, with the consent of the Owner thereof, Declarant shall have the unilateral right, privilege and option, from time to time and at any time within twenty (20) years of the recording of this Declaration, to subject additional property or properties at the discretion of the Declarant to this Declaration. Any annexation shall be effective upon the filing for record of a "Supplementary Declaration" unless a later effective date is provided in such "Supplementary Declaration." As long as covenants applicable to the Real Property previously subjected to this Declaration are not changed and as long as rights of existing Owners are not adversely affected, the Declarant may unilaterally amend this Declaration to reflect the different character of any such annexed Real Property. If any land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land, nor shall such rights in any manner restrict the use to which such additional land may be put by Declarant or any subsequent Owner thereof, whether such use(s) are consistent with the covenants and restrictions imposed hereby or not.

2.3 Additional Covenants, Restrictions and Easements. The Declarant may unilaterally subject any portion of the property submitted to this Declaration initially or by Supplementary Declaration to additional covenants, restrictions and/or easements and/or modify the applicability of the covenants, restrictions and easements contained in this Declaration as to such property, which is owned by Declarant.

2.4 Other Annexation. Upon written consent of: (a) the Owner(s) thereof; (b) the Declarant; and (c) the Owners of at least two thirds (2/3) of the Lots, the Association may annex Real Property to the provisions of this Declaration and the Jurisdiction of the Association by filing for record in the county in which the property to be annexed is located a Supplementary Declaration describing the property being annexed. Any such Supplementary Declaration shall be executed on behalf of the Association by the President of the Association whose signature shall be attested by the Secretary of the Association. The annexation shall be effective only upon the filing for record of such Supplementary Declaration, unless a later effective date is provided in such Supplementary Declaration.

ARTICLE 3

Association Membership and Voting Rights

3.1 Membership. Every Person who is record Owner of a fee or undivided fee interest in any Lot that is subject to this Declaration shall have a membership in the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more persons, shall have more than one membership per Lot. Membership shall be appurtenant to and may not be separated from ownership of a Lot. The rights and privileges of membership, including the right to hold office, may be exercised by a member or the designee of a member, but in no event shall more than one office be held for each Lot owned. This section is not intended to prohibit the same individual from being both an officer and a director of the Association. Nothing in this section shall restrict the number of votes cast or the number of officers and directors appointed by the declarant.

3.2 Voting. Members shall be entitled to one vote for each Lot owned. When more than one person holds an ownership interest in a Lot, the vote for such Lot shall be exercised as those Owners themselves determine and advise the Secretary prior to any meeting or referendum.

3.3 Notice of Sale, Lease or Acquisition. Prior to the sale or lease of any Lot, the Owner shall provide the Association with written notice of the name of the purchaser or lessee, as the case may be, and such other information as the Board may reasonably require. Upon acquisition of a Lot each new Owner shall provide the Association with the written name, mailing address of the Owner and other such information as the Association may reasonably require.

ARTICLE 4

Assessments

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

4.2 Creation of the Lien and Personal Obligation for Assessments. Each Owner of a Lot, by acceptance of a deed therefore, whether or not it shall be expressed in such deed, covenants and agrees to pay to the Association: (a) General Assessments; (b) Special Assessments; and (c) Specific Assessments. All such assessments, together with late charges, interest (at a rate set by the Board from time to time, but not to exceed the lesser of the maximum rate permitted by law or eighteen percent [18%] per annum on the principal amount due) and costs of collection, including without limitation reasonable attorneys' fees actually incurred, shall, from the time sums become due and payable, be a charge on the land and shall be a continuing lien in favor of the Association on the Lot against which each assessment is made. The recording of this

Declaration shall constitute record notice of the existence of the lien and no further recordation of any claim or lien shall be required. Each such assessment, together with late charges, interest and costs, shall also be the personal obligation of the Person who was the Owner of the Lot at the time the assessment fell due. Each Owner shall be personally liable for the portion of each assessment coming due while the Owner of the Lot, and each grantee of an Owner shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided however, the liability of a grantee for the unpaid assessments of the grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings. No Owner may waive or otherwise exempt themselves from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the property. No diminution or abatement of any assessment shall be claimed or allowed by reason of any failure of the Association to take some action or perform some function required to be taken or performed by the Association, the obligation to pay assessments being a separate and independent covenant on the part of each Owner. All payments shall be applied first to costs, then to late charges, then to interest and then to delinquent assessments.

4.3 General Assessments. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year. The General Assessment to be levied against each Lot shall be an equal amount for all Lots. The Board shall cause the budget and the assessments to be levied for the year to be delivered to each member at least thirty (30) days prior to the due date of the General Assessment. The budget and the assessment shall become effective unless disapproved at a meeting by a majority of the Total Association Vote and the Declarant. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for any period, then until such time as a budget shall have been determined, as provided herein, the budget in effect shall continue. General Assessments shall be paid in such manner and on such dates as may be fixed by the Board, which may include, without limitation, acceleration upon ten (10) days written notice for delinquents. Unless otherwise provided for by the Board, General Assessments shall be paid in one (1) annual installment. General Assessments include any sums the Board determines necessary for the continued operation, ownership and maintenance of the Common Property, operating expenses of the Association, payment for any items of betterment and the establishment of reserve funds as the Board deems proper. General Assessments may include, without limitation, sums for property taxes, insurance premiums, legal and accounting fees, management fees, charges for utilities, cleaning and janitorial services, landscape maintenance, expenses and liabilities incurred as provided herein and in the Articles of Incorporation and Bylaws for indemnification of officers and directors and in connection with enforcement of rights and duties of the Association against Owners and others.

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

4.5 Specific Assessments. The Board shall have the power to levy specific assessments as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under

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

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

4.7 Remedies of the Association. Any assessments or installments thereof which are not paid when due shall be delinquent. In addition to the lien rights, the personal obligation of the then Owner to pay such assessments shall remain such Owner's personal obligation and shall also pass to such Owner's successors in title. Such Owner shall nevertheless remain as fully obligated as before to pay the Association any and all amounts which such Owner was obligated to pay immediately preceding the transfer, and such Owner and such successors in title shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such Owner and such successors in title creating any indemnification of Owner or any relationship of principal and surety as between themselves. Any assessment or installment thereof delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may from time to time determine. The Association may cause a notice of delinquency to be given to any Owner who has not paid within ten (10) days following the due date. In the event that the assessment remains unpaid after sixty (60) days, the Association may initiate suit to collect such amounts and/or to foreclose its lien. The Association may file a notice of its claim of lien with the Office of the Clerk of the Superior Court of the county where the property is located, but no such claim of lien shall be required to establish or perfect the lien for unpaid assessments

BOOK 1367 PAGE 314

contained in this Declaration. Each Owner, by acceptance of a deed, vests in the Association the right and power to bring all actions against such Owner personally, for the collection of such charges as debt or to foreclose the lien. The lien provided for in this Declaration shall be in favor of the Association and shall be for the benefit of all Owners. The Association shall have the power to bid on any property within the Community at any foreclosure sale and to acquire, hold, lease, Mortgage and convey the same. The Association may also suspend the membership rights of the delinquent Owner, including the right to vote, the right of enjoyment in and to the Common Property and recreational facilities maintained by the Association and the right to receive and enjoy such servicing and other benefits as may then be provided by the Association. Any such suspension shall not affect such member's obligation to pay assessments coming due during the period of suspension and shall not affect the permanent lien on such property in favor of the Association.

4.8 Date of Commencement of Assessments. Assessments shall commence in general on the date the Board first determines a budget and levies assessments. The Assessments provided for herein shall commence as to a particular Lot on the date that the Lot is first conveyed by the Declarant to another owner. A Lot shall be occupied for residential purposes when it has been conveyed to an Owner who takes possession of the premises. The Declarant shall have no liability for assessments, except for Lots, if any, owned by Declarant, which have been occupied for residential purposes.

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

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

4.11 Estoppel Letter. The Association shall, within five (5) days of receiving a written request therefore and for a reasonable charge as established by the Board, certify to the amount of any unpaid assessments constituting a lien on a specified Lot. A certification letter signed by an officer of the Association or the Association's managing agent, if any, as to the amount of assessments due shall be binding on the Association.

ARTICLE 5

Maintenance of Common Property

5.1 Association's Responsibilities. The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair and replacement of all landscaping and improvements situated on Common Property. The Association shall also maintain (whether or not constituting Common Property): (a) all Community entry features; (b) Community landscaping originally installed by Declarant, whether or not such landscaping is on a Lot, privately owned property; (c) all storm water detention/retention ponds and storm water drainage facilities include by not limited to lakes and dams or public right-of-way; serving or included or lying within the Community, if and to the extent such facilities are not maintained by the owner of such facilities; (d) Community green space; (e) neighborhood parks which are not maintained by a Neighborhood Association; (f) any pedestrian paths located within the Community which are not maintained by a Neighborhood Association; and (g) all Community recreational facilities. In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether within or without the Community, and to enter into easements and covenant to share costs of agreements regarding such property where the Board has determined such action would benefit the Owners. In the event the Association determines that the need for maintenance, repair or replacement, which is the responsibility of the Association hereunder, is/was caused through the willful or negligent act of an Owner, or the Occupants, family, guests, lessees or invitees of an Owner, the Association may perform such maintenance, repair or replacement and all costs thereof, not paid for by insurance, shall be assessed against such Owner as a specific assessment. All maintenance by the Association shall be performed consistent with the Community Wide Standard.

5.2 Owner's Responsibilities. Except for the maintenance performed on a Lot by the Association pursuant to Section 5.1, if any, all maintenance of the Lot and all structures, landscaping and other improvements thereon shall be the sole responsibility of the Owner thereof who shall maintain such Lot in a manner consistent with Community Wide Standards and this Declaration. Such maintenance obligation shall include, without limitation, the following: prompt removal of all litter, trash, refuse and waste; lawn mowing on a regular basis; tree and shrub pruning; watering landscaped areas; keeping improvements and exterior lighting in good repair and working order; keeping lawn and garden areas alive, free of weeds and attractive; keeping driveways in good repair; complying with all government health and police requirements; and repair of exterior damages to improvements. In the event the Board determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to maintenance, repair or replacement of items for which Owner is responsible hereunder, the Association shall, except in emergency situations, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair or replacement at Owner's sole cost and expense. The notice shall set forth, with reasonable particularity, the maintenance, repair or replacement deemed necessary. The Owner shall have ten (10) days from the receipt of such notice to complete the necessary maintenance, repair or replacement, or, in the event such necessary maintenance, repair or replacement is not capable of

completion within a temporary period, the Owner shall have ten (10) days to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair or replacement and all costs thereof shall be assessed against the Owner of the Lot as a Specific Assessment.

5.3 Conveyance of Common Property by Declarant to Association: No Implied Rights.

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

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

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

5.6 Liability. Owners, Occupants and their guests shall use the Common Property at their own risk and shall assume sole responsibility for their personal belongings used or stored on the Common Property. The Association, the Declarant and their respective representatives, officers, directors, employees and/or agents shall not be held liable for personal injury to any person, nor for loss or damage to personal belongings used or stored on the Common Property.

ARTICLE 6

Architectural Standards

6.1 General. No exterior construction, alteration or addition of improvements of any nature whatsoever (including, without limitation, staking, clearing, excavation, grading, filing, construction of impervious surface, building, exterior alteration of existing improvements, change in exterior color of any existing improvements and/or planting or removal of landscaping materials) shall be commenced or placed upon any part of the Community unless installed by the Declarant or an affiliate of Declarant, approved in accordance with this Declaration, or otherwise expressly permitted in accordance with this Declaration. Owner may remodel, paint or redecorate the interior of structures on a Lot without approval hereunder; however, modifications to the interior of porches, patios and similar portions of a structure visible from outside the Lot shall require approval in accordance with this Article. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to re-build a structure in accordance with originally approved plans and specifications. This Article shall not apply to the activities of the Declarant, Declarant's affiliates or to improvements made to Common Property by or on behalf of the Association. This Article may not be amended without the written consent of the Declarant until: (a) Declarant no longer has the right to unilaterally annex additional property to the Community; and (b) each Lot has been improved with a dwelling for which a certificate of occupancy has been issued.

6.2 Guidelines and Procedures. Except as provided above, no exterior construction, addition or alteration shall be made to any Lot unless and until plans and specifications shall have been submitted in writing to and approved by Declarant. Such plans and specifications shall be of sufficient detail to allow the declarant to make its review and to the extent required by Declarant shall show the nature, kind, shape, height, materials and location of the proposed improvement. The Declarant may adopt written design and development guidelines and application and review procedures, which may provide for a review fee. The Declarant shall have sole and full authority to amend, from time to time, at its sole discretion and without notice, the Architectural guidelines. The Declarant shall make the Architectural guidelines available to Owners and builders who seek to engage in construction in the Community and such Owners and builders shall conduct their operations in strict compliance with said Architectural guidelines. If Declarant fails to approve or to disapprove submitted plans and specifications within thirty (30) days after receipt of all required plan specifications, such approval shall be deemed to have been given. As a condition of approval under this Article, each Owner, on behalf of such Owner and such Owner's successors in interest, shall assume full responsibility for maintenance, repair, replacement and insurance to and on any improvement, change, modification, addition or alteration. The Declarant shall be the sole arbiter of submitted plans and may withhold approval for any reason, including, without limitation, purely aesthetic considerations and shall be entitled to stop any construction in violation of any provision of this Declaration. The Declarant shall have the right, during reasonable hours and with reasonable notice to enter upon any property in the Community to inspect for the purposes of ascertaining whether or not these provisions have been or are being complied with. Declarant, Declarant's employees, representatives and/or agents shall not be deemed guilty of trespass by reason of such entry. If construction does not

commence on a project for which plans and specifications have been approved within twelve (12) months of the date of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the owner to resubmit the plans to Declarant for reconsideration.

6.3 Limitation of Liability. Plans and specifications are not approved for engineering, structural design, quality of materials and/or structural integrity, and by approving plans and specifications, Declarant accepts no liability or responsibility whatsoever therefore or for any defect in any structure constructed with such plans and specifications. Declarant hereby specifically disclaims any and all liability, responsibility and or obligation with respect to any defect in any structure constructed using approved plans and specifications, whether or not such approved plan showed, exhibited or otherwise suggested a defect that was known or knowable at the time said plans were approved. Neither Declarant, the Association, nor the officers, directors, members, employees and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval or to any Owner of property affected by these restrictions by reason of mistake in judgment, negligence, misfeasance or nonfeasance arising out of or in connection with the approval or disapproval, or failure to approve or disapprove any such plans and specifications. Any Person who submits plans and specifications hereunder, as well as every Owner, agrees that such Person or Owner will not bring any action or suit against Declarant, the Association or the officers, directors, members, employees and agents of any of them to recover any damages and hereby releases, remises, quitclaims, and covenants not to sue for all claims, demands and causes of action arising out of or in connection with any judgment, negligence, misfeasance or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given.

6.4 No Waiver. The approval of the Declarant of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring approval or consent of the Declarant, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposal, plans and specifications or drawings or matters subsequently or additionally submitted for approval or consent.

6.5 Variances. Notwithstanding anything in this document to the contrary, the Declarant shall be authorized to grant individual variances from any of the provisions of this Declaration and the Architectural guidelines if Declarant determines the waiver of application or enforcement of a provision in a particular case is dictated by unique circumstances, such as, but not limited to, topography, natural obstructions, hardship, aesthetic considerations or environmental considerations and would not be inconsistent with the overall scheme of development for the Community. No variance shall be effective (a) unless such variance is in writing; and (b) unless such variance is consistent with the overall scheme of development for the Community. No variance granted by Declarant shall estop Declarant from denying similar variances in similar situations. Declarant shall be the sole arbiter of whether or not a variance from the terms of this Declaration shall be granted. For the purposes of this provision, the inability to obtain approval of any governmental agency or the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

6.6 Enforcement. Any structure or improvement placed or made in violation of this Declaration shall be deemed to be non-conforming. Upon written request from Declarant, Owners shall, at their own cost and expense, remove such non-conforming structure or improvement and restore the property to substantially the same condition as existed prior to the non-conforming work. Should an Owner fail or refuse to remove and restore as required under this Article, the Declarant and its agents shall have the right to enter upon the property, remove the non-conforming structure or improvement and restore the property to substantially the same condition as existed prior to the non-conforming work. All costs, including, without limitation, attorneys' fees, may be assessed against the Lot as a Specific Assessment. Neither the Declarant, the Association, or the officers, directors, agents, employees and/or representatives of either Declarant or the Association shall be held liable to any Person for exercising the rights granted by this Article. In addition to any other remedies available to Declarant and the Association, in the event of non-compliance with this Article, the Declarant or the Association may record in the appropriate land records a notice of the violation hereunder naming the violating Owner. In addition to the foregoing, the Declarant and the Association shall have the authority and standing to pursue any and all remedies available at law or in equity to enforce the provisions of this Article.

6.7 Architectural Review Committee. Until (a) the Declarant no longer has the right to unilaterally annex additional property to the Community; and (b) each Lot has been improved with a dwelling for which a certificate of occupancy has been issued, the Declarant shall have the sole right, power and authority under this Article. There shall be no surrender of this right except in a written instrument, in recordable form, executed by the Declarant and recorded in the public land records of the Clerk of the Superior Court where this Declaration is recorded. Upon expiration earlier surrender in writing of all or any portion of such right and authority by Declarant, the Board shall then have jurisdiction over Architectural control under this Article as may have been relinquished by the Declarant. The Board may appoint and delegate all or a portion of its right, power and authority hereunder to an Architectural Review Committee of the Association. The Declarant may, in its sole discretion, relinquish Architectural control as to certain types of improvements or modifications to the Board while retaining control over all other building and construction in the Community. For example, and without limitation, the Declarant may relinquish control with respect to modifications of existing structures while retaining all authority with respect to new home construction. Any right, power and/or authority of the Declarant which may be relinquished to the Association prior to the termination of the rights of Declarant hereunder shall be written by recorded instrument only and no such right, power or authority shall be relinquished by implication or otherwise. The establishment of an advisory Architectural Review Committee by the Declarant shall not be deemed to be a relinquishment by Declarant of its rights, power and authority hereunder. After the termination of all rights of Declarant hereunder, the Board shall have all rights, power and authority to review and approve building and construction activity within the Community hereunder and this Article shall then be read and interpreted as if any reference to approval or other action to be taken by Declarant in this Article were an intentional and specific reference to the Board.

BOOK 1367 PAGE 319

ARTICLE 7

Use Restrictions and Rules BOOK 1367 PAGE 320

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

7.2 Residential Use. Each Lot shall be used for single family residential purposes only. For the purposes of this Declaration, single family residential purposes shall mean a group of individuals related by blood, marriage, adoption or guardianship, or, not more than six persons not so related, living as a single housekeeping unit. Leasing of a Lot for single family residential purposes shall not be considered business or business activity. No trade or business may be conducted on or from any Lot, except that the Owner or Occupant in residence at the Lot may conduct business activity within the dwelling unit so long as said business activity: (a) does not otherwise violate the provision of this Declaration or Bylaws; (b) is not apparent or detectable by sight, sound or smell from the exterior of the Lot; (c) does not unduly increase traffic flow or parking congestion; (d) conforms with all zoning requirements of the Community; (e) does not increase the insurance premium paid by the Association or otherwise negatively impact the Association's ability to obtain coverage; (f) is consistent with the residential character of the Community; (g) does not constitute a nuisance; and/or (h) does not threaten the safety or security of other residents of the Community; all as may be determined on a case by case basis in the sole discretion of the Board. The Board may issue rules regarding permitted business activity. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary 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: (x) the activity is engaged in full time or part time; (y) the activity is intended to or does generate a profit; or (z) a license is required for the activity.

7.3 Leasing. Lots and apartment units may be leased for single family residential purposes. Unless otherwise provided by the Board, all leases shall have a minimum term of six (6) months. All leases will require, without limitation, that the Occupants acknowledge receipt of a copy of this Declaration, Bylaws, use restrictions and rules and regulations of the Association and obligate Occupants to comply with said Declaration, Bylaws, use restrictions and rules and regulations of the Association.

7.4 Signs. No sign of any kind shall be erected within the Community without prior written consent of the Declarant or, after a termination of Declarant's rights hereunder, without the prior written consent of the Board of Directors. Notwithstanding the foregoing, the Board, any approved builder and the Declarant shall have the right to erect reasonable and appropriate signs. For-sale signs and security signs consistent with the Community Wide Standard and any signs

required by legal proceedings may be erected upon any Lot. The provisions of this paragraph shall not apply to any Mortgagee in possession due to foreclosure of a first Mortgage or as grantee pursuant to any deed in lieu of such foreclosure.

7.5 Motor Vehicles, Trailer, Boats, Etc. All automobiles owned or used by Owners or other than temporary guests and visitors shall be parked in garages to the extent that garage space is available, and garages shall not be used for storage or otherwise so that they become unavailable for parking cars therein. Garage doors shall be kept closed at all times except when yard work is being performed by an Owner. The Board of Directors shall have the authority to promulgate rules and regulations to govern or prohibit the outside storage or parking upon any Lot of any mobile home, trailer, truck, commercial vehicle of any type, camper, motorized camper or trailer, motorized go-cart or any other related forms of transportation devices. Furthermore, although not expressly, prohibited mobile homes, motor homes, campers, trailers of any kind, motorcycles, motorized bicycles, motorized go-carts and other similar vehicles or any of them, from being kept, placed, stored, maintained or operated upon any portion of the Property if in the opinion of the Board such prohibition shall be in the best interests of the Subdivision. No Owners or other occupants of any portion of the Property shall repair or restore any vehicle of any kind upon or within any Lot except (i) within enclosed garages or workshops or (ii) for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility. All motor vehicles of any kind located on a Lot shall be in operable condition, it being intended hereby that the parking or storage of inoperable motor vehicles on any Lot is prohibited. No motor vehicles of any kind, including but not limited to motor homes, boats, trailers, trucks and school buses, shall be parked on any street within the Subdivision or on any Lot so as to be visible from the street for periods of more than twenty-four (24) continuous hours. No motorized vehicles of any kind shall be operated on any portion of the Common Area or on any pathways providing access to the Common Area. No motorized three wheel or four wheel all terrain vehicles shall be operated upon any portion of the Property or the streets within the Subdivision. The Association, through the Board, may impose a fine for any violation hereof.

7.6 Garage All homes constructed on Lots shall contain a garage for the parking of vehicles. Owners shall not convert garages to any other use except in accordance with approved construction under Article 6, such construction and alteration to be in compliance with this Declaration and to include construction of a replacement garage.

7.7 Animals and Pets. No animals, livestock or poultry of any kind may be raised, bred, kept or permitted on the exterior of any Lot, with the exception of a total of four (4) pets, including dogs, cats or other usual and common household pets. No pets shall be raised, kept, bred and/or maintained for any commercial purpose. No exterior pens for household pets shall be erected or maintained on any Lot unless approved in accordance with Article 6 hereunder.

7.8 Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly or unkempt condition on a Lot. No Lot shall be used for the storage of anything that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or material

be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort or serenity of the Occupants of surrounding Lots. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, annoyance, or nuisance to any Person using any property with the Community. No plants, animals, devices or things of any sort shall be maintained in the Community whose activities or existence is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the Community by other Owners and Occupants. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier, or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Lot. Any noise that can be heard inside a neighboring house with the doors and windows shut will be considered too loud and in violation of this provision.

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

7.10 Antennas. No exterior antenna, receiving dish or similar apparatus of any kind for transmitting or receiving of radio or video signals shall be placed, allowed or maintained upon any portion of the Community, including any Lot, unless approved in accordance with the provisions of this Declaration; provided however, no such approval shall be required to install one antennae used to receive video programming (satellite dish or television antenna) not larger than one meter in diameter or diagonal measure, which blends with the color and is installed on or near the rear of the main dwelling. Installation of antennae deviating from this Article shall only be after approval for such antennae in accordance with Article 6 hereof.

7.11 Tree Removal. No trees that are more than four inches in diameter at a point twelve (12) inches above the ground and no ornamental or flowering trees, including, but not limited to, dogwood trees, cottonwood trees, cherry trees or apple trees, regardless of diameter shall be removed from a Lot without prior written approval pursuant to Article 6 hereof. Owners shall also comply with any local ordinance and zoning condition applicable to tree removal. In the event of a conflict between the provisions of this section and any local ordinance, the more restrictive shall govern. This provision shall not apply to removal of trees by Declarant, the Association or by an approved builder in connection with construction approved under Article 6 hereof.

7.12 Drainage. Catch basins, retention ponds, detention ponds, drainage swales and drainage easement areas are for the purposes of controlling the natural flow of water only. Owners shall not obstruct or alter the drainage flow across or from their Lot after location and installation of catch basins, retention ponds, detention ponds, drainage swales, storm sewers or storm drains without approval in accordance with the provisions of Article 6 hereof.

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

7.14 Garbage Cans, Woodpiles, Etc. All garbage cans, woodpiles, air conditioning units, heat pumps, swimming pool pumps, filters and related equipment, and/or similar items shall be located so as to be concealed from view from neighboring streets and property. All rubbish, trash, and garbage shall be regularly removed and shall not be permitted to accumulate.

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

7.16 Sidewalks Sidewalks shall be installed by the builders who purchase the lots from Declarant. Any such sidewalks shall be built to the town of Tyrone standards and shall be the same thickness as the driveways. All such sidewalks shall maintain consistency as to appearance and durability and no variance shall be allowed if such would detract from either the appearance or safety of the community. The Declarant reserves the right to determine at what point in time the sidewalks are to be installed as related to construction of any dwelling on the lots. Sidewalks should always be at least four (4) feet wide.

7.17 Fences. No fence or fencing type barrier shall be placed, erected, allowed or maintained on any Lot without prior written consent in accordance with the provisions of Article 6 hereof.

7.18 Utility Lines. Except as may be permitted under and pursuant to Article 6 hereof, no overhead utility lines, including lines for cable television shall be installed or maintained within the Community.

7.19 Air Conditioning Units. No window air conditioning units may be installed, unless approved in accordance with Article 6, paragraph "g".

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

7.21 Accessory Buildings, Sculpture, Flags. No artificial vegetation shall be permitted on the exterior of any Lot. No accessory building, fuel tank, sculpture, flag, fountain, or similar item may be constructed or displayed on the exterior of any Lot unless and until the plans, color

and location have been approved in writing pursuant to the requirements of Article 6 hereof. The American Flag may be displayed at any time as long as it is done in a respectful manner.

7.22 Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed, displayed or installed on the exterior of any Lot unless as an integral and harmonious part of the Architectural design of the structure, as determined in the sole discretion of the Declarant or the Architectural Review Committee, as the case may be, in accordance with the provisions of Article 6 hereof.

7.23 Swimming Pools. No swimming pool shall be constructed, erected or maintained upon any Lot unless and until the plans, color and location of such pool has been approved in writing pursuant to the requirements of Article 6 hereof and in no event will any above ground pool be permitted.

7.24 Gardens, Play Equipment and Pools. No vegetable gardens, hammocks, statuary, play equipment (including without limitation, basketball goals) nor any pool shall be placed/erected on any Lot other than between the rear line of the main dwelling and the rear lot line of the Lot, without prior written approval in accordance with the provisions of Article 6 hereof. Guidelines may be established concerning basketball goals or other outdoor improvements by the Declarant or the Board, in accordance with the provisions of Article 6 hereof, and no approval shall be required to erect outdoor improvements in accordance with said Guidelines. Compliance with established Guidelines shall be a matter to be determined in the sole discretion of Declarant in a manner consistent with the provisions of Article 6.

7.25 Mailboxes. All mailboxes serving Lots within the Community shall be approved in accordance with the provisions of Article 6 hereof. Identical replacement mailboxes may be installed without further approval; but no modifications to or any change in the mailboxes may be made unless approved in accordance with the provisions of Article 6 hereof.

7.26 Clotheslines. No exterior clotheslines will be permitted upon any Lot.

7.27 Reserved.

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

7.29 Wetlands and Streams. Except as provided herein, all lakes, wetlands, storm water detention or retention ponds and streams within the Community shall be used for storm water drainage only, no other use, including, without limitation, swimming, ice skating, playing, use of personal flotation devices or other recreation, will be permitted without the prior written consent of the Board. Fishing shall be permitted in the Community lakes by Owners and guests accompanied by an Owner so long as a license is obtained from the appropriate governmental authority. Except as may be permitted by the Declarant or the Board, as the case may be, no boats, other than canoes, paddle boats and fishing boats powered by electric trolling motors, shall

be permitted on the lake. The Association and/or Declarant shall not be responsible for any loss, damage and/or injury to any person or property arising from, connected with and or related in any way to the authorized or unauthorized use of the lake, wetlands, streams, ponds or recreational equipment within the Community. For this purpose Wetland means any area labeled as wetlands on a recorded plat for the Community or otherwise designated as wetlands by Declarant or the Board. No Owner shall have any right to place rocks, stones, trash, rubbish, garbage, sewage, waste water, debris, ashes or other refuse in any lakes, wetlands, storm water detention or retention ponds and streams within the Community. Appropriate governmental authorities, the Declarant or the Association, as the case may be, shall have the sole right to determine and control water levels of any body of water located within the Community and to control growth and eradication of plants, fowls, reptiles, animals, fish and fungi in and around any lakes, wetlands, storm water detention or retention ponds and streams within the Community. Owners shall have no riparian or littoral rights with respect to the waters of any lakes, wetlands, storm water detention or retention ponds and/or streams within the Community and shall not be permitted to withdraw water from any lake or stream within the Community without the prior written consent of the Board, the Association and the Declarant. The Declarant may, without the consent of the Association, the members or the Board, grant an easement to authorize the owner of a golf course to withdraw water from Community lakes or any streams within the Community. The Board may authorize special use groups to use a lake or any stream on a limited basis. The Board may except such group from use restriction under this Article which would otherwise be applicable.

7.30 Lake Lots. No Owner may construct a dock, retaining wall or similar structure on any Lot which abuts or is appurtenant to the lake without prior written approval in accordance with Article 6 hereof. No vegetable gardens, hammocks, statuary, play equipment, including without limitation, basketball goals and similar athletic equipment, boats or boating equipment, pools, fences, cloths drying equipment, dog houses, dog runs or other pet enclosures, signs, retaining walls or any other structure or thing which, in the sole discretion of the Declarant, tends to detract from the appearance of the Community, and especially the lake, shall be permitted on any Lot which abuts or is in appurtenant to the lake, without prior written approval in accordance with the provisions of Article 6 hereof. No Owner of any lot, which abuts or is in appurtenant to the lake shall interfere with the riparian rights of any other owner who has an interest in the lake.

7.31 Stream Buffer. Land disturbing activities shall not be conducted within twenty five (25) feet of the banks of any stream (or lake) within the Community, as measured from the point where vegetation has been wrested by normal stream flow, without prior written approval in accordance with the provisions of Article 6 hereof and in compliance with Georgia Law, including, without limitation, the Control of Erosion and Sedimentation Act, O.C.G.A. § 12-7-1 *et seq.*, as amended from time to time.

BOOK 1367 PAGE 325

ARTICLE 8**Insurance and Casualty Loss** BOOK 1367 PAGE 326

8.1 Insurance on Common Property. The Association shall obtain the insurance coverage necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the U.S. Department of Veterans Affairs and the U.S. Department of Housing and Urban Development, as applicable to the Community. Accordingly, the Board shall obtain casualty insurance for all insurable improvements, whether or not located on the Common Property, which the Association is obligated to maintain. The insurance shall provide, at a minimum, fire and extended coverage and shall be in an amount sufficient to cover full replacement cost of construction, repair and/or replacement in the event of damage or destruction from any such hazard. The Board shall obtain a public liability policy applicable to the Common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents and if reasonably available, directors' and officers' liability insurance. The public policy shall have a combined single limit of at least one million dollars (\$1,000,000.00). Policies may contain a reasonable deductible as determined by the Board. In addition to the other insurance required by this section, the Board shall obtain a Workers' Compensation policy, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on directors, officers, employees and other Persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of the fidelity coverage shall at least equal three months' total assessments plus reserves on hand. Fidelity coverage shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation. All such insurance coverage shall be written in the name of the Association.

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

8.3 Damage and Destruction – Insured by Association. Immediately after damage or destruction by fire or other casualty to any portion of any improvement covered by insurance written in the name of the Association, the Board or its duly licensed agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reasonable and reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this section, means the repairing or restoring of the property to substantially the same condition as existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Any damage or destruction to property covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty event, a

proposal not to repair or reconstruct such property is approved by at least seventy five (75%) percent of the Total Association Vote and the Declarant. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided however, such extension shall not exceed sixty (60) days. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the members, levy a special assessment against the Owner of each Lot. Additional assessments may be made in a like manner, as necessary, at any time before, during or after the completion of any repair or reconstruction. If the funds available from insurance exceed the cost of repair or reconstruction, or if the improvements are not repaired or reconstructed, such funds shall be deposited to the benefit of the Association. In the event it is determined that damaged or destroyed property shall not be repaired or reconstructed and no alternative improvements are authorized, the property shall thereafter be maintained by the Association in a neat and attractive condition.

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

ARTICLE 9

Mortgage Provisions

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

9.2 Audit. Upon written request of any institutional holder of a first Mortgage, and upon payment of all necessary costs, such holder shall be entitled to receive a copy of the audited financial statements of the Association within ninety (90) days of such request.

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

9.4 VA/HUD Approval. As long as the Declarant has the right to appoint and remove officers and/or directors of the Association and so long as the project is approved by the U.S. Department of Housing and Urban Development ("HUD") for insuring or the U.S. Department of Veterans Affairs ("VA") for guaranteeing any Mortgage in the Community, the following actions shall require the prior approval of the VA and/or HUD as applicable: annexation of additional property to the Community, except for unilateral annexation by Declarant as provided herein; dedication of Common Property to any public entity; merger, consolidation or dissolution of the Association; and material amendment to the Declaration, Bylaws or Articles of Incorporation.

ARTICLE 10

Easements

10.1 General. Each Lot shall be subject to those easements, if any, shown or set forth on the recorded subdivision plats for the Community, as amended from time to time as well as easements now or hereafter established by Declarant in this Declaration or by any other document recorded in the land records of the Superior Court Clerk of the County where the property is located.

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

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

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

(c) The right of the Association to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, repairing or improving any

facilities located or to be located thereon and upon the vote of the owners of at least two thirds (2/3) of the Lots (other than Declarant) and the consent of the Declarant, to give as security for the payment of any such loan a Mortgage conveying all, or any portion of, the Common Property; provided, however, the lien and encumbrance on any such Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of the Declarant or any Owner or the holder of any Mortgage encumbering any Lot or other property located within the Community (regardless of any contrary provision in this Declaration or in any such Mortgage given by the Association, the exercise of any rights by the holder of such Mortgage in the event of default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of Declarant or any Owner or the holder of any Mortgage encumbering any Lot);

(d) The right of the Association, acting through the Board and without a vote, to dedicate or grant licenses, permits, easements and rights of way over, under and through the Common Property to government entities, any quasi government entity or to any cable television company or utility company;

(e) The right of the Association to dedicate or transfer all or any portion of the Common Property upon the approval of the Owners of at least two thirds (2/3) of the Lots (other than Declarant) and the Declarant;

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

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

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

10.4 Easement for Emergency Entry. The Association shall have the right, but not the obligation, to enter upon any Lot for emergency, security or safety reasons and to inspect for the purposes of ensuring compliance with this Declaration, any Supplemental Declaration, Bylaws and rules, which right might be exercised by any member of the Board, the officers, agents,

employees and managers of the Association and all policemen, firemen, ambulance personnel and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Lot to cure any condition which may increase the possibility of fire, slope erosion or other hazard in an emergency situation and in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Association, but shall not authorize entry into any single family dwelling without permission of the Owner.

10.5 Easement for Maintenance. Declarant hereby grants to the Association a perpetual easement across the exterior portions of all Lots as may be reasonably necessary for the maintenance required hereunder. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment of the Lots, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Association or its contractors at its sole expense.

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

10.7 Easement for Drainage. There is hereby reserved to the Declarant and granted to the Association and each approved builder a blanket easement across all Lots for creating and maintaining satisfactory storm water drainage in the Community; provided however, such easement area shall not include any portion of a Lot within the outer perimeter of the dwelling or structure. This easement shall include the right to construct and maintain catch basins, retention ponds, detention ponds, drainage swales, storm sewers, storm drains, sloping banks, cut or fill. It is anticipated that increased storm water run off across downstream Lots will result in the construction of impervious surface within or adjacent to the Community. Neither Declarant, the Association or any builder or Owner constructing according to plans and specifications approved under Article 6 hereof shall have any liability to any Owner due to the increased flow or velocity of surface water resulting from approved construction within the Community.

10.8 Easement During Construction and Sale Period. Notwithstanding any provision now or hereafter contained in this Declaration, the Bylaws, Articles of Incorporation, use restrictions, rules and regulations, Architectural Guidelines and amendments thereto, Declarant reserves an easement across the Community for Declarant and any approved builder to maintain and carry on, upon such portion of the Community as Declarant may reasonably deem necessary, such facilities and activities as in the sole opinion of Declarant may be required or convenient for Declarant's and such approved builder's development, construction and sales activities related to the property hereby and hereafter subjected to this Declaration or nearby property being developed by Declarant or such approved builder, including, but not limited to: the right to place or authorize placement of marketing or directional signs on Lots or rights of way at street

intersections within the Community; the right of access, ingress and egress for vehicular or pedestrian traffic and construction activities over, under, on or in the Community, including, without limitation, any Lot; the right to tie into any portion of the Community with streets, driveways, paths, parking areas and walkways; the right to tie into and/or otherwise connect and use (without a tap on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, gas, water sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to grant easements in, over, under or on the Community, including without limitation, the Lots, for the benefit of neighboring properties for the purpose of tying into or otherwise connecting and using sewer and drainage lines and facilities constructed or installed in, on, under or over the Community, the right to convert Lots (with the consent of the Owner thereof) to Common Property and/or streets; the right to construct recreational facilities, utilities, and other improvements on Common Property; the right to carry on sales and promotional activity in the Community; and the right to construct and operate business offices, signs, construction trailers, model residences, and sales offices. Declarant and any approved builder may use residences, offices, or other buildings owned or leased by Declarant or such builder as model residences and sales offices and may also use Community recreational facilities as a sales office without charge. This section shall not be amended without the express written consent of the Declarant until Declarant's rights hereunder have terminated.

ARTICLE 11

Use of Recreational Facilities by Non-Members

11.1 Rights Reserved by Declarant. Declarant shall have the right to grant to Persons who are not members of the Association the right to use any Community recreational facility. The extent and duration of nonmember use and the fee to be charged therefore shall be determined solely by the Declarant. The Declarant may grant nonmember, use rights to individuals on a nonrenewable annual basis or as an easement appurtenant to such individual's residential Real Property so that such use rights shall automatically inure to the benefit of the grantee and their respective successors in title to Real Property. Nonmember user fees shall be paid to the Association. Unless otherwise provided by the Board, such fees shall be paid in annual installments. The Board may increase the amount of such payments every year so long as the annual fee does not exceed the annual general assessment levied against members of the Association. Any use right granted to nonmembers which extends beyond the termination of Declarant's rights hereunder shall be valid and shall not be terminated by the Association so long as the terms and conditions imposed on nonmember use by Declarant are complied with by the nonmember user.

11.2 Right and Easement of Use. Declarant hereby expressly reserves unto itself, its successors and assigns a nonexclusive, perpetual right, privilege and easement with respect to the Community for the benefit of the Declarant, its successors and/or assigns and the above discussed nonmember users, over, under, in and/or on the above described recreational facilities, without obligation and without further charge to the foregoing, for the purposes of taking all actions related to or connected with the granting of nonmember use and the use by such

nonmembers as described above. Such right, privilege and easement shall include, without limitation, the right of access, ingress, use and egress of and to the above described recreational facilities and the right of access, ingress, use and egress for vehicular and pedestrian traffic over, under, across, in and/or on the Community roads, parking areas and walkways.

11.3 Remedy of Association Upon Failure to Pay User Fees. Declarant shall not be held liable for and is hereby held harmless from any failure of any nonmember to pay a user fee to the Association. In such case, the Association's sole remedy shall be to suspend the use right of the nonmember who has not timely paid. Declarant shall also not be liable and is hereby held harmless from any personal injury or property damage caused to or by a nonmember using the Community recreational facilities. The provisions of this section shall apply notwithstanding any contrary provisions in this Declaration, the Bylaws, Articles of Incorporation, rules and regulations, use restrictions and any amendments to the foregoing.

11.4 Right of Association to Grant Nonmember Use Rights. After the termination of Declarant's rights under this Declaration as hereinafter provided, the Association shall be entitled to grant nonmember use rights to the same extent as the Declaration could previously under this Article.

11.5 Capacity of Facilities. After termination of Declarant's rights hereunder as hereinafter provided, the Association shall be entitled to grant nonmember use rights to the same extent as the Declarant could previously grant under this Article.

ARTICLE 12

General Provisions

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

12.2 Occupants Bound. All provisions of this Declaration, the Bylaws, rules and regulations, use restrictions and design guidelines which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to Occupants and the guests and invitees of Owners and Occupants. The Owner shall be responsible for insuring that the Occupants, the guests,

licensees and invitees of Owners and Occupants strictly comply with all provisions of this Declaration, the Bylaws, rules and regulations, use restrictions and design guidelines. Fines may be levied against Owners or Occupants. If a fine is levied against an Occupant and is not timely paid, the fine may then be levied against the Owner.

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

12.4 Duration. The covenants, conditions, restrictions and easements contained in this Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by the Association, the Declarant, any Owner as well as their respective representatives, heirs, successors and assigns, perpetually to the extent provided by law; provided however, if and to the extent that Georgia law limits the period which covenants to land respecting certain uses may run, any provision of this Declaration affected thereby shall run with and bind the land as permitted by such law, after which time, any such provisions shall be (a) automatically extended for successive periods of twenty (20) years (or the maximum period permitted by law, if less than twenty years), unless a written instrument signed by the owners of at least two thirds (2/3) of the Lots has been recorded within the year immediately preceding the beginning of a twenty (20) year renewal period agreeing to terminate same; or (b) extended, renewed, modified or terminated as otherwise provided herein or by applicable law.

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

12.6 Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable government statute, rule or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable a reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (c) if such amendment is required by an institutional or government lender or purchaser of Mortgage loans, including without limitation, Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or (d) if such

BOOK 1367 PAGE 333

amendment is necessary to enable any governmental agency or private insurance company to insure or guarantee Mortgage loans on the Lots subject to this Declaration; provided however, any such amendment shall not adversely affect the title to any Lot unless the Owner of such Lot consents thereto in writing.

Further, Declarant may unilaterally amend this Declaration for any other purpose; provided however, any such amendment shall not materially adversely affect the substantive rights of any Owner hereunder, nor shall it adversely affect title to any Lot without the consent of the affected Owner. The Board, with the written consent of the Declarant, and without a vote of the members, may amend this Declaration for the sole purpose of electing to be governed by the provisions of the Georgia Property Association Owner's Act, O.C.G.A. § 44-3-220 *et seq.* In addition to the above, this Declaration may be amended on the affirmative vote or written consent of at least two thirds (2/3) of the Owners of the Lots and the Declarant. Amendments to this Declaration shall become effective upon recordation unless a later effective date is specified therein. The consent of the Declarant shall be evidenced by the execution of said amendment by Declarant. The consent of the requisite number of Owners shall be evidenced by the execution of said amendment by said Owners, or, in the alternative, the sworn statement of the President or any Vice President or the Secretary of the Association attached to or incorporated in the amendment, which sworn statement shall unequivocally state that the consent of the required number of Owners was obtained and that any notices required by this Declaration, the Bylaws, the Articles of Incorporation and Georgia law were given.

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

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

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

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

12.11 Reserved

12.12 Notices. Notices provided for in this Declaration or the Articles or Bylaws shall be in writing, and shall be addressed to an Owner at the address of the Lot and to the Declarant or the Association at the office of their respective registered agents on file with the Secretary of State of the State of Georgia. Any Owner may designate a different address for notices to such Owner by giving written notice to the Association. Notices addressed as above shall be mailed by United States Registered or Certified Mail, return receipt requested, postage prepaid, or delivered in person, including delivery by private courier service. The time period in which a response to any such notice must be given, or any action taken with respect thereto, shall commence to run from the date of personal delivery or the date of the receipt shown on the return receipt. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice sent.

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

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

12.15 Agreements. Subject to the prior approval of the Declarant, all agreements, determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board, shall be binding on all Owners, their heirs, legal representatives, successors and assigns and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

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

12.17 Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least seventy five (75%) percent of the Total Association Vote and the consent of the Declarant. This section shall not apply to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided herein; (c) proceedings involving challenges to ad valorem taxation; and/or (d) counter claims brought by the Association in proceedings instituted against it. This section shall not be amended unless such amendment is made unilaterally by the Declarant as provided herein or is approved by at least seventy five (75%) percent of the Total Association Vote.

12.18 Arbitration. Except as provided below, any controversy arising under this Declaration between the Association, the Declarant and any Owner or Occupant shall be submitted to binding arbitration pursuant to the provisions of the Georgia Arbitration Code O.C.G.A. § 9-9-1 *et seq.* Such arbitration shall in all respects be governed by the provisions of said arbitration code as to any controversy so submitted to arbitration. The following matters shall not require mandatory arbitration: (a) any suit by the Association against any Owner to collect assessments as provided in this Declaration; and (b) any suit by the Association to obtain temporary equitable relief and such ancillary relief as the court may deem necessary in order to maintain the status quo and/or preserve the Association's ability to enforce any provision of this Declaration.

IN WITNESS WHEREOF, the Declarant herein hereby executes this instrument under seal this 22nd day of March, 1999.

DECLARANT:

Thomas F. "Chip" Young, III

BY:

T.F. Young III

Signed sealed and delivered in the presence of

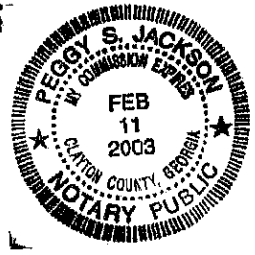
[Signature]
Witness #1

[Signature]
Witness #2

[Signature]
Notary Public

2/11/03
My Commission Expires

[AFFIX NOTORARIAL SEAL]



BOOK 1367 PAGE 337

Book: 1367 Page: 302 Seq: 36