



Deed Doc. CND0  
Recorded 01/05/2005 01:50PM

After Recording Return To:  
Michael J. McCleary  
Fortson, Bentley & Griffin, P.A.  
P.O. Box 1744  
Athens, GA 30603

Beverly Logan  
Clerk Superior Court, Athens-Clarke County, Ga.  
Bk 02796 Pg 0021-0055

DECLARATION  
OF COVENANTS, RESTRICTIONS AND EASEMENTS  
FOR THE COTTAGES AT HOMEWOOD

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR THE COTTAGES AT HOMEWOOD is made this 8<sup>th</sup> day of December, 2004, by COLDWATER DEVELOPMENT, LLC, a Georgia limited liability company and Chesser/Kennedy Builders, Inc., a Georgia corporation (hereinafter referred to as "Declarant").

BACKGROUND STATEMENT

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

Declarant intends to develop on the real property described above, a development to be known as The Cottages at Homewood (hereinafter referred to as the "Development"). Declarant intends by this Declaration to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within The Cottages at Homewood, the planned unit development made subject to this Declaration, by the recording of this Declaration and amendments thereto. Declarant desires to provide a flexible and reasonable procedure for the overall development of The Cottages at Homewood and the interrelationship between the Association (as hereinafter defined) established pursuant to this Declaration. Declarant also desires to establish a method for the administration, maintenance, preservation, use and enjoyment of the property that is now or hereafter subjected to this Declaration.

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

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

## ARTICLE I DEFINITIONS

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

1.01 Association. "Association" means The Cottages at Homewood Homeowners Associations, Inc. (a non-profit, nonstock, membership corporation organized under the Georgia Nonprofit Corporation Code), its successors and assigns.

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

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

1.04 Commencement Date. "Commencement Date" means the date on which the first Residence is sold to a third party other than Declarant or the builder of such Residence.

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

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

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

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

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

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

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

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

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

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

1.14 Residence. "Residence" or "Unit" shall mean a structure situated upon a Lot intended for independent use and occupancy as a residence for a single family. A structure and the land owned as a part thereof (the Lot) shall not become a Residence until a certificate of occupancy shall have been issued by the appropriate governmental authorities as a pre-requisite to the occupancy of such Residence and until the Lot and structure located thereon shall have been conveyed to a third party other than the builder thereof. The Owner of a Residence shall notify the Association of its designee immediately upon issuance of a Certificate of Occupancy for the Residence.

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

1.16 Structure. "Structure" means:

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

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

## ARTICLE II COMMON PROPERTY

2.01 Conveyance of Common Property.

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

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

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



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

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

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

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

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

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

(d) dedicate or transfer all or any part of the Common Property or interests therein to any municipality or other governmental body, agency or authority for such purposes and subject to such provisions and conditions as may be agreed upon by the Association and such grantee, including a provision that such property or interest shall, if such dedication or transfer is approved by a two-thirds (2/3) vote of the Members who are present in person or by proxy and voting at a meeting of Members



duly held in accordance with the By-Laws of the Association, cease to be subject to this Declaration or all or any part of the Restrictions while held by any such municipality or other governmental body, agency or authority;

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

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

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

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

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

**2.04 Conveyance of Common Property by Declarant to Association.** The Declarant may transfer or convey to the Association any personal property and any improved or unimproved property, leasehold, easement or other property interest which is or may be subjected to the terms of this Declaration. Such conveyance shall be accepted by the Association, and the property shall thereafter be Common Property to be maintained by the Association for the benefit of all of its Members.

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

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

## 2.07 Association's Maintenance Responsibility.

(a) Common Property Responsibility. The Association shall maintain, repair and replace all portions of the Common Property. The maintenance shall include, without limitation, maintenance, repair and replacement of: (i) all landscaping and improvements situated on the Common Property; (ii) all entry features located at The Cottages at Homewood, including entry signs and entry area landscaping even if situated on a designated Lot, any irrigation system and the expenses for water and electricity, if any, provided to all such entry features; (iii) all storm water detention/retention ponds and storm water drainage facilities located in or serving The Cottages at Homewood, if and to the extent such improvements or facilities are not maintained by the owner of such facilities or a government body; (iv) all private streets, alleyways and sidewalks located at The Cottages at Homewood; (v) the common fence which runs along the easternmost boundary line of the Development and Block A of the Homewood Hills Subdivision; and (vi) any street lights located at The Cottages at Homewood, if and to the extent not maintained by an appropriate governmental authority or utility company.

~~DELETED SECTION~~ <sup>SEE</sup> ~~AMENDMENT ATTACHED - 6/05~~

(b) Lot Responsibilities. The Association shall provide, maintain and keep in good repair the following: (i) lawn / yard service for the Lots including lawn mowing on a seasonally based regular interval, (ii) irrigation systems, (iii) removal of litter, refuse and waste, (iv) tree and shrub pruning, (v) 30' Alley and 40' Private Driveway / Utility Easement Areas, parking areas and walkways (not within the public right of way) in good repair, (vi) ~~keep fences, retaining walls and gates in good repair, on the Detached Single Family Residential Parcel except as provided otherwise in this Article.~~ The costs of the Association's responsibilities under this Section 5.1(b) shall be levied as a Parcel Assessment and shall not be a Common Expense.

The Association shall be not be liable for injury or damage to a person or property caused by the elements or by any Owner, or by any other person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Common Area or from any pipe, drain, conduit, appliance or equipment, the responsibility for the maintenance of which is that of the Association, nor shall the Association be liable to any Owner for loss or damage, by theft or otherwise, of any property which may be stored in or upon any part of the Common Area. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform such function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance or with any order or directive of any municipal or other governmental authority.

2.08 Owner's Maintenance Responsibility. Except as otherwise provided for in Section 2.07, all maintenance of the Unit and all structures, landscaping/gardens, areas not maintained by the Association and other improvements thereon shall be the sole responsibility of the Owner, who shall maintain such Unit in a manner consistent with the Development-Wide Standard and this Declaration.

In the event that the Board of Directors determines that any Owner has failed to discharge properly any of such Owner's obligations with regard to the maintenance, repair or replacement, or, in the event that such maintenance, repair or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not then comply, the Association may provide any such maintenance, repair or replacement and all costs shall be assessed against the Owner and the Unit as a Specific Assessment.

### ARTICLE III HOMEOWNERS ASSOCIATION

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

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

#### 3.03 Voting Rights.

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

(b) The Declarant shall be the sole Class B Member and shall be entitled to three (3) votes for each Lot or Residence owned; provided, however, in no event shall the Class B Member have less than the total number of Class A votes plus one (1). The Class B Membership shall cease and be converted to Class A Membership at such time as Declarant no longer retains the right to appoint and remove members of the Board and officers of the Association pursuant to Section 3.08 below.





(c) The Development will be composed of numbered Lots to be developed in phases containing unequal numbers of Lots. The Development will be platted of record in the Office of the Clerk of the Superior Court of Athens-Clarke County in accordance with Article X of this Declaration. By acceptance of a deed conveying a Lot, each Owner acknowledges that, upon the filing by Declarant of the subdivision plats covering the Development, the total votes outstanding in the Association will automatically increase based upon the number of Lots and in accordance with the formula set forth in subsection (b) of this Section 3.03 and in no event shall Class B Membership cease and be converted to Class A Membership (as provided in subsection (b) of this Section 3.03) until after the Association receives the written notice provided for in the preceding sentence.

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

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

(a) shall be subject to the Right of Abatement, as defined in Section 8.02 by reason of having failed to take the reasonable steps to remedy a violation or breach of the Restrictions within thirty (30) days after having received notice of the same pursuant to the provisions of Section 5.09, 6.11 or 8.02 hereof;

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

(c) shall be in violation of the rules and regulations of the Association relating to the use, operation and maintenance of Common Property. Such suspension shall be for the balance of the period in which said Member or person shall remain in violation, breach or default, as aforesaid, except that in the case of a violation described in subsection (c) of this Section 3.05, the suspension may be for a period not to exceed 60 days after the cure or termination of such violation. No such suspension shall prevent an Owner's ingress to or egress from his Lot.

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

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

### 3.08 Control by Declarant.

(a) Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the Bylaws of the Association, Declarant hereby retains the right to appoint and remove any members of the Board of the Association and any officer or officers of the Association until 15 days after the first of the following events shall occur: (i) the expiration of twenty (20) years after the date of the recording of this Declaration; (ii) the date upon which all of the Residences intended by Declarant to be a part of the Development have been conveyed by Declarant to Owners other than a homebuilder or a person or persons constituting Declarant, or (iii) the surrender by Declarant of the authority to appoint and remove directors and officers by an express amendment to this Declaration executed and recorded by Declarant.

(b) Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of this Section, such right shall automatically pass to the Owners, including Declarant if Declarant then owns one or more Lots; and a special meeting of the Association shall be called at such time. At such special meeting the Owners shall elect a new Board of Directors which shall undertake the responsibilities of the Board and Declarant shall deliver the books, accounts, and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period which Declarant has in its possession. Each Owner by acceptance of a deed to or other conveyances of a Lot vests in Declarant such authority to appoint and remove directors and officers of the Association as provided in this Section. The Association may exercise any other right or privilege given to it reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

## ARTICLE IV ASSESSMENTS

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

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

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

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

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

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

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

4.02 Purpose of Assessment. The assessments levied by the Association shall be used exclusively for the purpose of providing for the common good and general welfare of the people of the Development, including, but not limited to, the acquisition, construction, improvement, maintenance and equipping of Common Property, the enforcement of the Restrictions contained in this Declaration, the payment of operating costs and expenses of the Association, the payment of all principal and interest when due on all debts owed by the Association and to provide the following services for the benefit of each Residence: annual termite treatment, lawn care, weekly trash pick-up and home security system monitoring.

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



#### 4.04 Annual Assessment.

(a) Beginning on the Commencement Date and continuing thereafter until January 1 of the year immediately following the Commencement Date, each Lot shall be subject to an annual assessment of Two Thousand One Hundred and No/100 Dollars (\$2,100.00) per Residence. In the event that the Commencement Date falls on a day other than January 1, the annual assessment for such year shall be prorated so that each Owner pays an annual assessment proportional to the number of days remaining in the calendar year. Declarant may bill each Owner the annual assessment on a monthly, quarterly or annual basis, as it deems fit. The words "Assessment Year" as used herein shall mean the calendar year with the first Assessment Year commencing on January 1 of the year immediately following the Commencement Date. For so long as Declarant has the right to appoint and remove Directors and Officers of the Association, the annual assessment shall not be reduced below \$2,100.00 without the express written consent of Declarant.

(b) Commencing with the first Assessment Year and continuing thereafter, the annual assessment for each Assessment Year may at any time and from time to time be increased by an amount that the Board, in its discretion, deems appropriate, necessary and reasonable at a meeting of the Board duly held in accordance with the provisions of the By-Laws of the Association and this Declaration.

#### 4.05 Special Assessments.

(a) In addition to the annual assessments authorized by this Article IV, the Association may levy, in any Assessment Year and with such frequency as the Association shall deem necessary, special assessments for the purpose of paying, in whole or in part, any unanticipated operating expenses, as well as the cost of any construction, reconstruction, repair or replacement of a capital improvement on the Common Property. Such special assessments may be levied by the Board, in its discretion, as it deems appropriate, necessary and reasonable, in any Assessment Year without the approval of the members.

#### 4.06 Assessment Procedures.

(a) The Board shall establish the annual assessment for each Assessment Year at an amount not in excess of the maximum annual assessment as determined by the provisions of this Article IV, and shall also establish the date during the Assessment Year on which the annual assessment shall be due and payable (such date is hereinafter referred to as the "Due Date"). The Board shall also establish an annual budget which shall list the estimated operating expenses and shall contain an amount to be set aside each year into a reserve allowance to be used for future repair and replacement of the Common Property; provided, however, in no event shall the Board be required to provide for a reserve sufficient to cover all such future repair and replacement of the Common Property, it being intended that a portion of such costs will be covered by Special Assessment. The Board shall cause the Association



to send to each Owner at least thirty (30) days in advance of the Due Date written notice setting forth the amount of the annual assessment and the Due Date. The annual assessment shall become due on the thirtieth (30th) day following such written notice or the Due Date, whichever is later. In the event that the Board fails for any reason to fix the annual assessment for any year, then until such time as an assessment shall have been determined, the assessment in effect for the previous year shall continue. The Board may establish reasonable payment procedures to allow or require payment of the annual assessment in installments during the Assessment Year. The Board shall also establish payment procedures for payment of any special assessments for capital improvements which may be levied in accordance with the provisions of this Article IV.

(b) All Members of the Association shall be given written notice by the Board not less than thirty (30) nor more than sixty (60) days in advance of any meeting of the Members of the Association at which the Board shall propose taking action pursuant to Section 4.04(c) and Section 4.05 of this Article IV. Such written notice shall specify under which sections the Board will propose action. At such meeting, the presence of Members or of proxies entitled to cast fifty percent (50%) of the total votes outstanding shall constitute a quorum. If the required quorum is not present at such meeting, a second meeting may be called by the Board subject to the same notice requirement, and the required quorum at such second meeting shall be thirty percent (30%) of the total votes outstanding. No such second meeting shall be held more than sixty (60) days following the first meeting. If the required quorum is not present at the second meeting, the Board may take such action without approval of the Members.

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

4.08 Contribution By Declarant. For so long as Declarant has the authority to appoint and remove Directors and Officers of the Association, Declarant shall not be liable for the payment of any assessments. Provided, however, during said period Declarant shall 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 the reserve allowance), and the sum of annual, special and specific assessments collected by the Association in any Assessment Year, and such advances shall be evidenced by promissory notes from the Association to Declarant.

4.09 Effect of Nonpayment of Assessments. Any Assessment which is not paid on or before the Due Date shall bear interest after the Due Date at the lower of the highest legal rate of interest which can be charged or the rate of eighteen percent (18%) per annum or at such rate as the Board may from time to time establish, provided, however, that in no event shall the Board have the power to establish a rate of interest in violation of the laws of the State of Georgia. In the event of default in the payment of any one or more installments of an assessment, the Board may declare any remaining balance of the assessment at once due and payable. In the event that an owner shall fail to pay fully any portion of any assessment prior to the date on which payment is due, such unpaid portion (including any remaining

balance declared immediately due and payable in accordance with the preceding sentence), together with interest and costs of collection of such Owner, shall be a binding personal obligation of such Owner, as well as a lien on such Owner's Residence enforceable in accordance with the provisions of this Declaration.

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

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

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

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

(b) Expenses incurred by the Association pursuant to Section 6.11 hereof; and

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

4.13 Capitalization of Association. The first Owner of each Lot other than the Declarant, an affiliate of Declarant, or a builder designated by the Declarant, shall make a contribution to the working capital of the Association in an amount equivalent to three (3) monthly installments of the Annual Assessment. (For example, the initial Annual Assessment is \$2,100.00 which would equate to \$175.00 per month. Therefore, the initial contribution shall be three times that monthly amount or \$525.00.)

This amount shall be in addition to, not in lieu of, the Annual Assessment, any Special or Specific Assessments levied on the Lot and shall not be considered an advance payment of such assessments. This amount shall be due and payable to the Association immediately upon transfer of title, for its use in covering initial start-up expenses, operating expenses and other expenses that it incurs pursuant to this Declaration and the By-Laws.

ARTICLE V  
ARCHITECTURAL CONTROL

5.01 Architectural Control Committee - Creation and Composition.

(a) An Architectural Control Committee (the "ACC") shall be established consisting of three (3) individuals. Notwithstanding anything to the contrary contained herein, Declarant shall have the right, but not the obligation, to appoint all members of the ACC until the plans for all of the Residences for all of the Lots in the Development have been approved by the ACC. Thereafter, the Board shall appoint the members of the ACC. All costs of operating the ACC, may, at the discretion of Declarant, be borne by the Association.

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

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

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

5.04 Submission of Plans and Specifications. No Structure shall be commenced, erected, placed, moved onto or permitted to remain on any Lot nor shall any existing Structure upon any Lot be altered in any way which materially changes the exterior appearance of the Structure or Lot, unless plans and specifications therefor shall have been submitted to and approved in writing by the ACC. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the ACC.

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

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

- (a) the failure to include information in such plans and specifications as may have been reasonably requested;
- (b) the failure of such plans or specifications to comply with this Declaration;
- (c) any other matter which, in the judgment of the ACC, would be likely to cause the proposed installation, construction or alteration of a Structure (i) to fail to be in conformity and harmony of external design and general quality with the standards for The Cottages at Homewood Development as set forth in the Development-Wide Standard, or (ii) as to location to be incompatible with topography, finished ground elevation and surrounding Structures. In any case in which the ACC shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by



a statement of the grounds upon which such action was based. In any case the ACC shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal may be prepared and submitted for approval.

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

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

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

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

5.11 Disclaimer as to ACC Approval. Plans and specifications are not reviewed for engineering or structural design or quality of materials, and by approving such plans and specification neither the ACC, the members thereof, nor the Association assumes liability or responsibility therefor, nor for any defect in any structure constructed from such plans and specifications. Neither Declarant, the Association, the ACC, the Board, nor the officers, directors, members, employees, and agents of

any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner of property affected by these Restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans and specifications and every Owner agrees that he will not bring any action or suit against Declarant, the Association, the ACC, the Board, or the officers, directors, members, employees and agents of any of them to recover any such damages and hereby releases, remises, quit-claims, and covenants not to sue for all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

## ARTICLE VI GENERAL COVENANTS AND RESTRICTIONS

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

6.02 Restriction of Use. Lots may be used for single-family residences only and for no other purposes provided that Declarant and its duly authorized agents, representatives and employees shall have an easement for the maintenance of signs, a sales office, a business office and models on the property together with such other facilities as, in the opinion of Declarant, may be reasonably required or convenient to the construction, completion, development or sale of the Lots so long as Declarant owns any Lot for sale. No dwelling shall be constructed, erected, placed, altered or maintained on any Lot consisting of less than 1,250 square feet of heated floor space. No dwelling shall contain any exterior vinyl or vinyl siding. Only brick, stone or stucco material or other material approved by the ACC shall be permitted as the exterior finish of a dwelling. No dwelling shall have concrete blocks as an exposed finish material, however concrete blocks may be used only as foundations or for basements and must not be part of a visible exterior of a dwelling above ground level.

6.03 Resubdivision of Property. No Lot may be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise, without the prior written approval of the ACC of plans and specifications for such split, division or subdivision.

6.04 Erosion Control. No activity which may create erosion or siltation problems shall be undertaken on any Lot without the prior written approval of the ACC of plans and specifications for the prevention and control of such erosion or siltation. The ACC may, as a condition of approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include (by way of example and not of limitation) physical devices for

controlling the run-off and drainage of water, special precautions in grading and otherwise changing the natural landscape and required landscaping as provided for in Section 6.05.

6.05 Landscaping. No construction or alteration of any Structure shall take place without the prior written approval by the ACC of plans and specifications for the landscaping to accompany such construction or alteration. Guidelines for the landscaping to accompany the construction or alteration of any Structure may be included in the Development Guidelines of the ACC which shall include, without limitation, sodded grass front yards with an underground irrigation system.

6.06 Temporary Buildings. No temporary building, trailer, garage or building under construction shall be used, temporarily or permanently, as a residence on any Lot. No contractor or builder shall erect on any Lot any temporary building or shed for use in connection with construction on such Lot.

6.07 Signs.

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

(i) such signs as may be required by legal proceedings;

(ii) not more than one "For Sale" or "For Rent" sign as to each Residence provided that such sign may only be displayed in the front yard of such Lot, provided, however, that any such sign shall be subject to any rules and regulations of the Association adopted with respect thereto; and, provided, further that if, at the time of any desired use of such sign, the Association is making signs available for the use of Owners, the signs made available by the Association must be used;

(iii) directional signs for vehicular or pedestrian safety in accordance with plans and specification approved by the ACC; and

(iv) not more than one sign as to each Lot showing the Residence located on such Lot is protected by a security system, provided, however, that any such sign shall be subject to any rules and regulations of the Association adopted with respect thereto.

(b) The ACC shall also have the right to approve the location, color, size, design, lettering, and all other particulars of property identification markers, of receptacles for the receipt of mail, or similarly delivered materials, and of name signs for such receptacles.

6.08 Fences. No fence or wall of any kind shall be erected, maintained, or altered on any Lot without the prior written approval of the ACC of plans and specifications for such fences and walls.

Specifically, there shall be no fences in the front yard and the ACC may dictate the design and material of all fencing visible from any street.

6.09 Antennae, Etc. No exterior television or radio antennae or satellite dish or receiver or solar equipment of any sort shall be placed, allowed or maintained upon any portion of a Structure or Lot without prior written approval of the size and location by the ACC. No antennae shall be installed or used for the purpose of the transmitting of electronic signals.

6.10 Clotheslines, Solar Equipment, Garbage Cans, Etc. All clotheslines, equipment, garbage cans, woodpiles and solar equipment shall be kept screened by adequate planting or fencing so as to conceal them from view by neighboring residences and streets, and may be maintained in the rear yard on a Lot only.

6.11 Maintenance. Each Owner shall keep and maintain each Lot and Structure owned by him, in good condition and repair, including, but not limited to the repairing and painting (or other appropriate external care) of all Structures. If in the opinion of the ACC, any Owner shall fail to perform the duties imposed by this Section, the ACC shall notify the Association. If the Board shall agree with the determination of the ACC with respect to the failure of said Owner to perform the duties imposed by this Section, then the Board shall give written notice to the Owner to remedy the condition in question, setting forth in reasonable detail the nature of the condition and the specific action or actions needed to be taken to remedy such condition. If the Owner shall fail to take reasonable steps to remedy the condition within thirty (30) days after the mailing of said written notice by certified mail, the Association shall have the Right to Abatement as provided in Section 8.02 hereof.

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

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

6.14 Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept, provided they are not kept, bred or maintained for any commercial purposes.



6.15 Solid Waste.

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

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

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

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

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

6.17 Rules and Regulations. Reasonable rules and regulations concerning the use of the Lots may be adopted, promulgated, revoked, made and amended from time to time by the Board of Directors. Copies of such rules and regulations and amendments thereto shall be furnished by the Board of Directors to all Owners. Such rules and regulations shall be binding upon the Owners and Occupants of Lots until and unless any such rule or regulation is specifically overruled and cancelled in a regular or special meeting of the Association by the vote of Owners holding a majority of the total votes in the Association. As provided by Articles IV and VIII hereof, the Association may impose fines for violations of any such rules and regulations as are determined by the Board of Directors.



ARTICLE VII  
EASEMENTS, ZONING AND OTHER RESTRICTIONS

7.01 Easements.

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

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

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

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

(iv) the planting or re-planting of hedges, shrubbery, bushes, trees, flowers and plants of any nature.

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

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

7.03 Entry. The Declarant and its employees, agents, successors and assigns, shall have the right at all reasonable times to enter upon all parts of each Easement Area for any of the purposes for which such Easement Area is reserved, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and the carrying out of such purposes, provided the same are done in accordance with the provisions of this Section. The Declarant and its employees, agents, successors and assigns shall be responsible for leaving each Lot in good condition and repair following any work or activity undertaken in an Easement Area pursuant to the provisions of Section 7.01.

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

7.05 Construction and Sale Period Easement. Notwithstanding any provisions contained in this Declaration, the Bylaws, Articles of Incorporation, use restrictions, rules and regulations, guidelines and procedures, and any amendments thereto, Declarant reserves unto itself a nonexclusive easement across the Development for Declarant to maintain and carry on, upon such portion of the Development as Declarant may reasonably deem necessary, such facilities and activities as in the sole opinion of Declarant may be required, convenient or incidental to Declarant's development, construction and sales activities related to property included within the Development Plan, including, but without limitation: the right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in the Development, including, without limitation, any Unit; the right to tie into any portion of the Development with street, driveways, paths, parking areas and walkways; the right to tie into and/or otherwise connect and use (without a tap-on any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, television, gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Development; the right to grant easements over, under, in or on the Development, including without limitation, the Units, for the benefit of neighboring properties for the purpose of tying into and/or otherwise connecting and using sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Development; the right to convert Units and Parcels, or portions thereof (with the consent of the Owner thereto) to Common Property and/or streets; the right to construct utilities and other improvements on Common Property; the right to carry on sales and promotional activities in the Development; and the right to construct and operate business offices, signs, construction trailers, and sales offices. Declarant may use residences, offices, or other buildings owned or leased by Declarant as models and sales offices and may also use Common Property as a sales office without charge. Rights exercised pursuant to this reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property and damage shall be repaired by the Person causing the damage at its sole expense. This Section will not be amended without the written consent of Declarant.

7.06 Approved Builder. Approved Builders shall have the same easement rights as Declarant necessary for the construction and sales activities of Units, including, without limitation, those easement rights granted to Declarant in Section 7.05 hereof.

7.07 Access Easements. Notwithstanding any provisions contained in this Declaration, the Bylaws, Articles of Incorporation, use restrictions, rules and regulations, guidelines and procedures, and any amendments thereto, Declarant hereby grants the following:



(a) to each Owner, their invitees and assigns, a non-exclusive, perpetual easement over, across and through the 30' Alley Easement Area (16' Paved) for purposes of vehicular and pedestrian ingress, egress and access to said Owner's Lot; and

(b) to the Owners of Lots 1 and 2, both of Block A, a non-exclusive, perpetual easement over, under, across and through the 40' Private Drive / Utility Easement Area for purposes of vehicular and pedestrian ingress, egress and access and the installation, maintenance, repair and replacement of any and all utilities.

#### ARTICLE VIII ENFORCEMENT

8.01 Right of Enforcement. This Declaration and the Restrictions contained herein shall inure to the benefit of and shall be enforceable by (i) the Declarant so long as it is an Owner, (ii) the Association and (iii) each Owner, his legal representatives, heirs, successors and assigns.

8.02 Right of Abatement.

(a) Except where different notice provisions are provided in Sections 5.09 and 6.11, in the event of a violation or breach of any Restriction contained in this Declaration, the Association shall give written notice by certified mail to the Owner setting forth in reasonable detail the nature of such violation or breach and the specific action or actions needed to be taken to remedy such violation or breach. If the Owner shall fail to take reasonable steps to remedy such violation or breach within thirty (30) days after the mailing of said written notice, then the Association shall have the Right of Abatement.

(b) The Right of Abatement, as used in this Section and in Sections 5.09 and 6.11 hereof, means the right of the Association, through its agents and employees, to enter at all reasonable times upon any Lot or Structure, as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove, or repair such violation, breach or other condition which may exist thereon contrary to the provisions hereof. without being deemed to have committed a trespass or wrongful act solely by reason of such entry and accordance with the provisions of this Section, and with the cost thereof including the costs of collection including reasonable attorneys' fees, together with interest thereon at the lower of the highest rate permitted by Law or 18% to be a binding personal obligation of such Owner enforceable in law, as well as a lien on such Owner's Lot enforceable pursuant to the provisions of Section 8.04 hereof. Such lien shall be superior to any and all charges, liens or encumbrances which may in any manner arise to be imposed upon the Lot after such entry whether arising from or imposed upon the Lot after such entry whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, excepting only (i) such liens for taxes or other public charges as are



by applicable law made superior, (ii) the liens created by Section 4.01 hereof and (iii) all deeds to secure debt given to secure a loan the proceeds of which are used (1) to purchase a Lot or Lots (together with any and all Structures which may from time to time be placed or located thereon) and (2) to finance the construction, repair or alteration of Structures.

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

**3.04 Collection of Assessments and Enforcement of Lien.**

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

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

percentum of the aggregate amount due for attorneys' fees, shall pay any excess to such Owner, or to the heirs or assigns of such Owner as provided by law. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise and are granted as cumulative to the remedies for collection of said indebtedness provided by law.

(c) WAIVER. EACH OWNER, BY ACCEPTANCE OF A DEED CONVEYING A LOT SUBJECT TO THIS DECLARATION, WAIVES ANY RIGHT WHICH OWNER MAY HAVE UNDER THE CONSTITUTION OR THE LAWS OR THE STATE OF GEORGIA OR THE CONSTITUTION OR THE LAWS OF THE UNITED STATES OF AMERICA TO NOTICE OR TO A JUDICIAL HEARING PRIOR TO THE EXERCISE OF ANY RIGHT OR REMEDY PROVIDED BY THIS DECLARATION AND OWNER WAIVES OWNER'S RIGHTS, IF ANY, TO SET ASIDE OR INVALIDATE ANY SALE DULY CONSUMMATED IN ACCORDANCE WITH THE PROVISIONS OF THIS DECLARATION ON THE GROUND (IF SUCH BE THE CASE) THAT THE SALE WAS CONSUMMATED WITHOUT A PRIOR JUDICIAL HEARING. ALL WAIVERS BY OWNER IN THIS PARAGRAPH HAVE BEEN MADE VOLUNTARILY, INTELLIGENTLY AND KNOWINGLY, AFTER OWNER HAS FIRST BEEN ALLOWED THE OPPORTUNITY TO CONSULT LEGAL COUNSEL WITH RESPECT TO OWNER'S POSSIBLE RIGHTS.

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

#### ARTICLE IX DURATION AND AMENDMENT

9.01 Duration. This Declaration and the Restrictions contained herein shall run with and bind the Property for a period of twenty (20) years from and after the date when this Declaration is filed for record with the Clerk of the Superior Court, Athens-Clarke County, Georgia, after which time this Declaration and the Restrictions shall be automatically renewed for successive periods of ten (10) years provided, however, that after the end of the said twenty (20) year period and during any ten (10) year renewal period (but only during such renewal period), this Declaration and the Restrictions contained herein may be terminated by an instrument executed by the proper Association officers and recorded in the Office of the Clerk of the Superior Court of Athens-Clarke County, Georgia, or in such other place of recording as may be appropriate at the time of the execution of such instrument, pursuant to a resolution approving such termination which is approved by a two-thirds (2/3) vote of those Class A Members of the Association who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the provisions of the By-Laws of the Association.

9.02 Amendments by Declarant. During any period in which Declarant retains the right to appoint and remove any directors and officers of the Association, Declarant may amend this Declaration by an instrument in writing filed and recorded in the Land Records of the Superior Court of Athens-Clarke County, Georgia, without the approval of any Member or mortgagee; provided, however, that (i) in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of such Owner's Lot or of the Common Property as set forth in this Declaration or if such amendment adversely affects the title to any Lot, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Members affected thereby, or (ii) in the event that such amendment would materially and adversely affect the security title and interest of any mortgagee, such amendment shall be valid only upon the written consent thereto of all such mortgagees so affected. Any amendment made pursuant to this Section 9.02 shall be certified by Declarant as having been duly approved by Declarant, and such Members and mortgagees if required, and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself. Each Owner, by acceptance of a deed or other conveyance to a Lot, agrees to be bound by such amendments as are permitted by this Section 9.02 and further agrees that, if requested to do so by Declarant, such Owner will consent to the amendment of the Declaration or any other instruments relating to the Development (i) if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots subject to this Declaration, (iii) if such amendment is required by an institutional or governmental lender, purchaser or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any Lot subject to this Declaration, (iv) if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loan on the Lots subject to this Declaration or (v) if such amendment is necessary to correct a scrivener's error in the drafting of this Declaration.

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

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

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



right to appoint and remove officers and directors of the Association, such amendment must be approved by Declarant.

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

#### ARTICLE X ANNEXATION AND FUTURE DEVELOPMENT

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

10.2 Future Development. Notwithstanding any other provision contained herein to the contrary, and subject to applicable zoning regulations, Declarant shall have the right, for so long as Declarant has the authority to appoint and remove Directors and Officers of the Association, to annex real property according to the procedure set forth in Section 10.1, which real property may be developed as single family PUD, condominiums, or attached or detached townhomes. At the time of such annexation, Declarant shall determine, on an equitable basis, the proportional share of the assessments payable by and the number of votes allocated to such property, which determination will be based upon the degree to which the Occupants of said property have the right to use and are benefitted by the Common Areas. Such determination shall be made by amendment to this Declaration, which shall not require the approval of any Member or third party.



ARTICLE XI  
MISCELLANEOUS

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

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

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

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

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

- (a) Declarant: Coldwater Development, LLC  
Attention: Jeffrey R. Chesser  
P.O. Box 1372  
Watkinsville, GA 30677
- (b) Owners: Each Owner's address as registered with the  
Association in accordance with the By-Laws.

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

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

#### 11.07 Insurance.

(a) At all times during the term of this Declaration, the Association, its successors and assigns, shall be required to keep any and all improvements located on the Common Property fully insured by a reputable insurance company authorized to transact business in the State of Georgia with (i) fire, vandalism, malicious mischief and extended coverage insurance in an amount adequate to cover the cost or replacement of such improvements in the event of loss or any and/or all of such improvements, fixtures and contents thereof; and (ii) public liability insurance in such amounts as shall be determined by the Board of Directors as appropriate for the type of activities which shall be allowed on the Common Property. Any such policies of insurance shall require that the certificate holders and insured be given thirty (30) days prior written notice of any cancellation of such policies.

Notwithstanding the preceding provision, the Board may at its discretion, require each Owner to name the Association as an additional insured party under each Owner's respective homeowners insurance policy. If the Board determines that this method of coverage is adequate, then this alternative method of coverage may be implemented in lieu of a policy or policies owned by the Association as described in the preceding paragraph.

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

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

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

the improvements are not repaired or reconstructed, such excess shall be deposited for the benefit of the Association.

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

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

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

#### ARTICLE XII MORTGAGEE PROVISIONS

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

12.01 Notice of Action. An institutional holder, insurer, or guarantor of a first mortgage, who provides written request to the Association (such request to state the name and address of such holder, insurer, guarantor and the Residence number, therefore becoming an "eligible holder"), will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Development or which affects any Residence on which there is a first mortgage held, insured, or guaranteed by such eligible holder;

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



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

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

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

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

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

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

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

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

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

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



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

12.05 Amendment by Board. Should the Veterans Administration, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

12.06 Veterans Administration Approval. As long as the Declarant has an option unilaterally to subject property to this Declaration as provided in Article X, the following actions shall require the prior approval of the Veterans Administration so long as the Veterans Administration is guaranteeing any mortgage in the Community; annexation of additional property to the Community, except for annexation by Declarant in accordance with Article X, pursuant to a plan of annexation previously approved by the Veterans Administration; dedication of Common Property to any public entity; and material amendment of the Declaration, By-Laws or Articles of Incorporation.

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

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

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

Signed, sealed and delivered  
in the presence of:

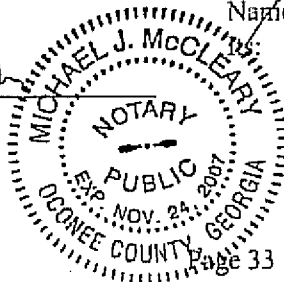
COLDWATER DEVELOPMENT, LLC, a  
Georgia limited liability company

Luisa Mahner  
Unofficial Witness

By: [Signature] (Seal)  
Name: Jeffrey E. Chesser  
Member

[Signature]  
NOTARY PUBLIC

[Notary Seal]





Bk 02796

Pg 0054

Signed, sealed and delivered  
in the presence of:

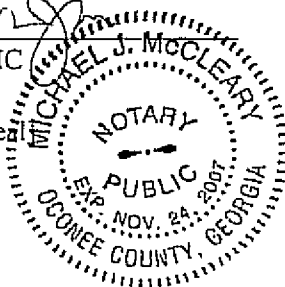
Denise Mahler  
Unofficial Witness

CHESSER/KENNEDY BUILDERS, INC., a  
Georgia corporation

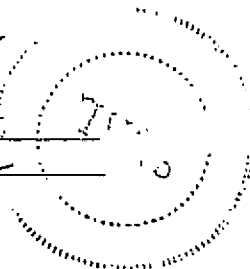
By: Todd Kennedy  
Name: [Signature]  
Its: President

NOTARY PUBLIC

[Notary Seal]



Attested By: [Signature]  
Name: Jeffrey R. Chesser  
Its: Secretary



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

IN WITNESS WHEREOF, the Association, acting through its duly authorized officers, has caused this Declaration to be executed and sealed this 8<sup>th</sup> day of December, 2004.

Signed, sealed and delivered  
in the presence of:

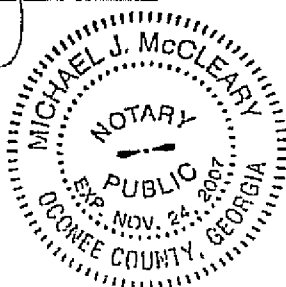
Denise Mahler  
Unofficial Witness

THE COTTAGES AT HOMEWOOD  
HOMEOWNERS ASSOCIATIONS, INC.

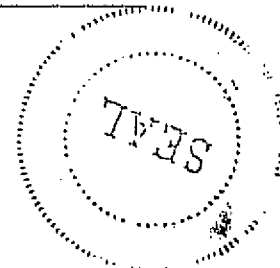
By: [Signature]  
Name: Jeffrey R. Chesser  
As Its: President

NOTARY PUBLIC

[Notary Seal]



(Corporate Seal)



After Recording-Return To:  
Michael J. McCleary, Esq.  
Fortson, Bentley and Griffin, P.A.  
P.O. Box 1744  
Athens, GA 30603-1744

**FIRST AMENDMENT TO DECLARATION OF COVENANTS,  
RESTRICTIONS AND EASEMENTS FOR THE COTTAGES AT HOMEWOOD**

THIS First Amendment to the Declaration of Covenants, Restrictions and Easements for the Cottages at Homewood (the "Amendment") is made and entered into as of the 30<sup>th</sup> day of June, 2005.

**WITNESSETH:**

WHEREAS, Coldwater Development, LLC, a Georgia limited liability company and Chesser/Kennedy Builders, Inc., a Georgia corporation (hereinafter referred to as "Declarant") is the Declarant of that certain Declaration of Covenants, Restrictions and Easements for the Cottages at Homewood dated December 8, 2004, recorded in Deed Book 2796, page 21, in the Office of the Clerk of Superior Court of Athens-Clarke County, Georgia (hereinafter the "Declaration"); and

WHEREAS, in accordance with section 9.02 of the Declaration, Declarant currently retains the right to appoint and remove any directors and officers of the Association and Declarant desires to amend the Declaration by modifying some of the provisions contained therein.

NOW THEREFORE, Declarant hereby amends, modifies, alters and changes the Declaration as follows:

1. Paragraph 2.07(b) entitled Lot Responsibilities is deleted in its entirety and substituted in lieu thereof is the following:

"(b) Lot Responsibilities. The Association shall provide, maintain and keep in good repair the following: (i) lawn / yard service for the Lots to include lawn mowing on a seasonally based regular interval, (ii) periodic tree and shrub pruning, and (iii) 30' Alley and 40' Private Driveway / Utility Easement Areas, parking areas and walkways not located within the public right of way."

2. Add Paragraph 2.07(c) as follows:

"(c) Hold Harmless. The Association shall be not be liable for injury or damage to a person or property caused by the elements or by any Owner, or by any other person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the

Common Area or from any pipe, drain, conduit, appliance or equipment, the responsibility for the maintenance of which is that of the Association, nor shall the Association be liable to any Owner for loss or damage, by theft or otherwise, of any property which may be stored in or upon any part of the Common Area. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform such function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance or with any order or directive of any municipal or other governmental authority."

3. Paragraph 4.04(a) regarding Annual Assessments is hereby deleted in its entirety and substituted in lieu thereof is the following:

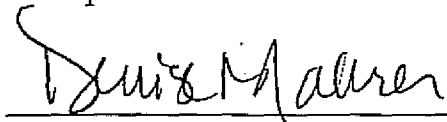
"Beginning on the Commencement Date and continuing thereafter, each Lot shall be subject to an annual assessment for typical Association expenses in an amount initially determined by the Declarant. In the event that the Commencement Date falls on a day other than January 1, the annual assessment for such year shall be prorated so that the Owner pays an annual assessment proportional to the number of days remaining in the calendar year. Declarant, and subsequently the Association, may bill each Owner the annual assessment on a monthly, quarterly or annual basis, as it deems fit. The words "Assessment Year" as used herein shall mean the calendar year, with the first full Assessment Year commencing on January 1 of the year immediately following the Commencement Date. For so long as the Declarant has the right to appoint and remove Directors and Officers of the Association, the annual assessment shall not be reduced from the previous Assessment Year without the express written consent of Declarant."

4. In Paragraph 4.13 entitled Capitalization of Association, delete the parenthetical after the first sentence.

5. Except as amended hereby, the Declaration shall remain and be in full force and effect.

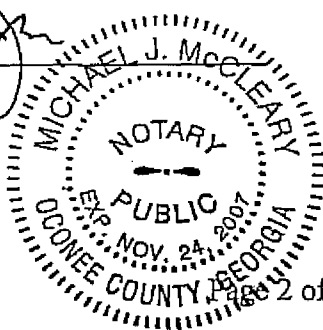
IN WITNESS WHEREOF, the Declarant has executed this Amendment under seal the date first above written.

Signed, sealed and delivered,  
in the presence of:

  
\_\_\_\_\_  
Unofficial Witness

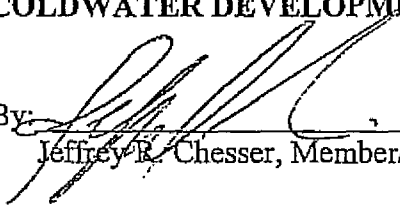
NOTARY PUBLIC

(Notary Seal)



DECLARANT:

COLDWATER DEVELOPMENT, LLC

By:  (Seal)  
Jeffrey R. Chesser, Member/Manager

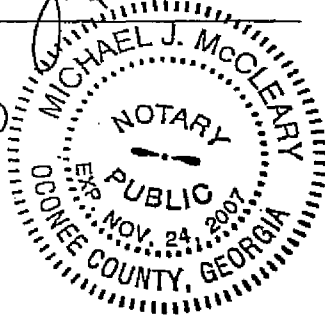
Signed, sealed and delivered,  
in the presence of:

**CHESSER/KENNEDY BUILDERS, INC.**

Unofficial Witness

NOTARY PUBLIC

(Notary Seal)



By:

Todd Kennedy, President

Attest:

Jeffrey R. Chesser, Secretary

[Corporate Seal]

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

IN WITNESS WHEREOF, the Association, acting through its duly authorized officers, has caused this Amendment to be executed and sealed on the date first above written.

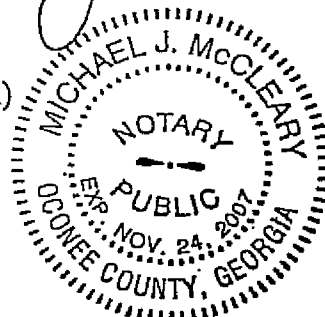
Signed, sealed and delivered,  
in the presence of:

**THE COTTAGES AT HOMEWOOD  
HOMEOWNERS ASSOCIATION, INC.**

Unofficial Witness

NOTARY PUBLIC

(Notary Seal)



By:

Jeffery R. Chesser, President

[Corporate Seal]



EXHIBIT "A"

Legal Description

AS TO COLDWATER DEVELOPMENT, LLC:

ALL those tracts or parcels of land, situate, lying and being in the 1347th District, G.M., Athens-Clarke County, Georgia, being known and designated as Lots 1 through 19, Block A; Lots 1 through 14, and Lot 19, Block B; Lots 1, 7, 8, 9, 10, 11 and 12, Block C; Lots 1 through 7, Block D; Outlot A, 0.116 acres (common area); Outlot B, 0.700 acres (common area); Outlot C, 0.647 acres (common area); Outlot D, 0.470 acres (common area); Outlot E, 21.269 acres (common area); Outlot F, 0.033 acres (common area); Outlot G, 0.058 acres (common area); and Outlot H, 0.073 acres (40' ingress-egress & utility easement); Alley A-1; Alley A-2; Alley A-3; Alley B-1; Alley B-2; Alley C-1 (paved); Alley C-2; and Alley D-1 (paved); as shown on a plat entitled "Final Plat and As-Built Sanitary Sewer & Water Line Plat for: COTTAGES AT HOMEWOOD Athens," prepared by Ben McLeroy & Associates, Inc., Ben McLeroy, Registered Land Surveyor Number 1184, dated May 26, 2004, and recorded in Plat Book F, pages 375-E and 375-F, in the Office of the Clerk of the Superior Court of Athens-Clarke County, Georgia, and being incorporated herein by reference for a more particular description.

AS TO CHESSER/KENNEDY BUILDERS, INC.:

ALL those tracts or parcels of land, situate, lying and being in the 1347th District, G.M., Athens-Clarke County, Georgia, being known and designated as Lots 15, 16, 17 and 18, Block B, and Lots 2, 3, 4, 5 and 6, Block C, as shown on a plat entitled "Final Plat and As-Built Sanitary Sewer & Water Line Plat for: COTTAGES AT HOMEWOOD Athens," prepared by Ben McLeroy & Associates, Inc., Ben McLeroy, Registered Land Surveyor Number 1184, dated May 26, 2004, and recorded in Plat Book F, pages 375-E and 375-F, in the Office of the Clerk of the Superior Court of Athens-Clarke County, Georgia, and being incorporated herein by reference for a more particular description.





Bk 03241 Pg 0220

AND THE SAID GRANTOR will warrant and will forever defend the right and title to the above described property unto the said Grantee, his heirs, executors, administrators, successors and assigns, against the lawful claims of all persons whomsoever.

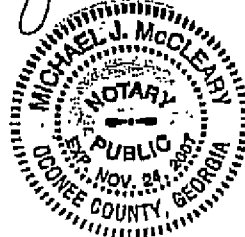
IN WITNESS WHEREOF, the Grantor has hereunto set his hand, affixed his seal, and delivered these presents the day and year first above written.

Signed, sealed and delivered  
in the presence of:

Kenneth B. Bessie  
Unofficial Witness

NOTARY PUBLIC

[Notary Seal]



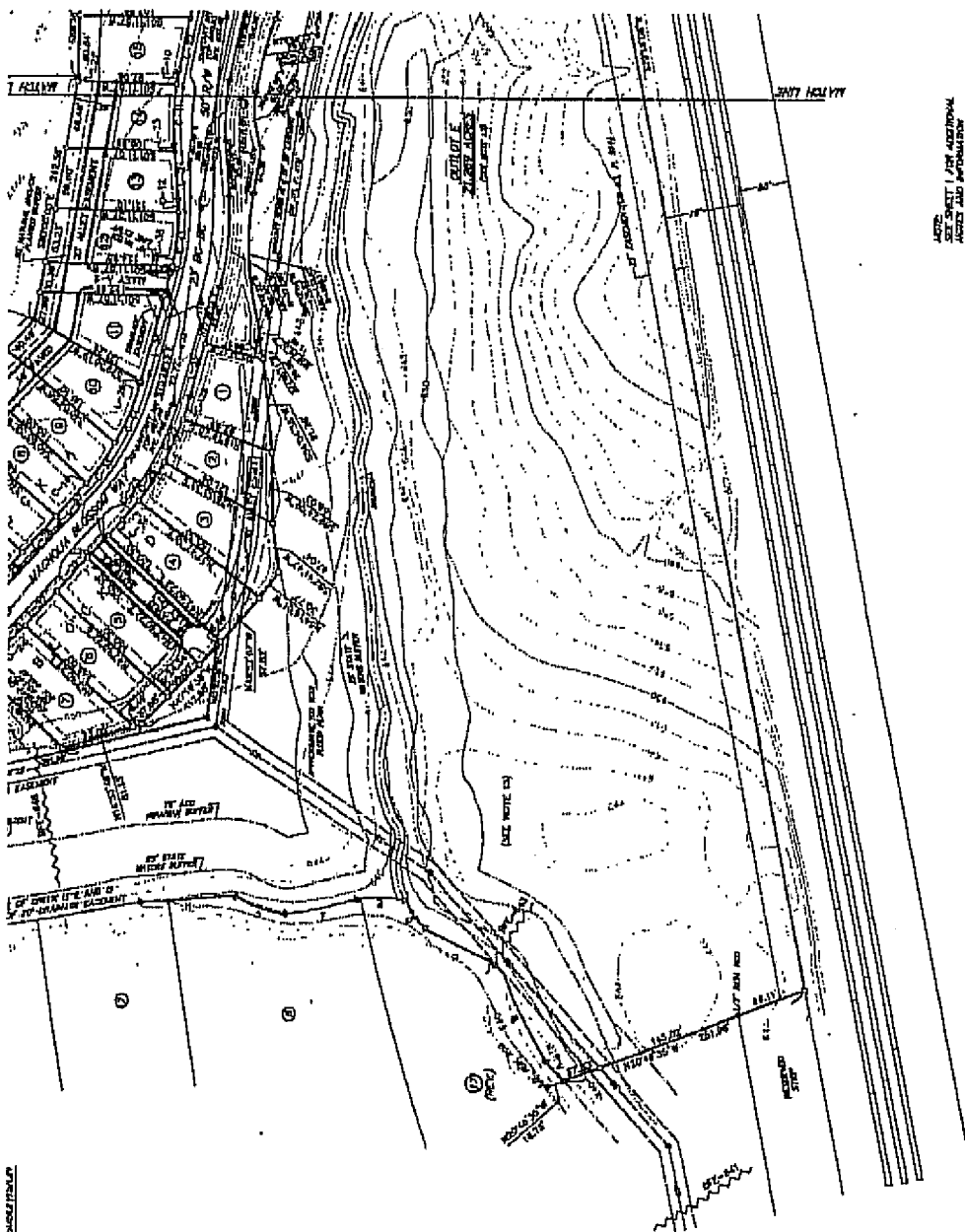
COLDWATER DEVELOPMENT, LLC

BY: Jeffrey R. Chesser  
JEFFREY R. CHESSEY, MEMBER

BY: Christopher Todd Kennedy  
CHRISTOPHER TODD KENNEDY, MEMBER







2025 RELEASE UNDER E.O. 14176

**SHEET 2 OF 2**

たぬき「アハハ」

## COTTAGES AT HOMEWOOD

ATHENS				
DATE	CLIQUE	CASH	1347	TYPE OF CHARGE
MAY 25	MAY 2004	8.00	1-80	YOUNG STORMEN
PROGNOSE	2007			STORMEN ARE NOW LIVING & APPROXIMATELY 1400 THOUSAND & APPROXIMATELY 2000 ALIENS ARE 2007-20

[illegible]

1911  
COLLECTED  
BY  
J. H. COOPER  
JAN 10 1911

File  
 Doc PLAT  
 Recorded 09/13/2004 09:24AM  
 Heavy Leg  
 City Supter Court, Alameda County Sheriff, Ca  
 Ek 000017 N 375 W



F-375E

## CURVE TABLE

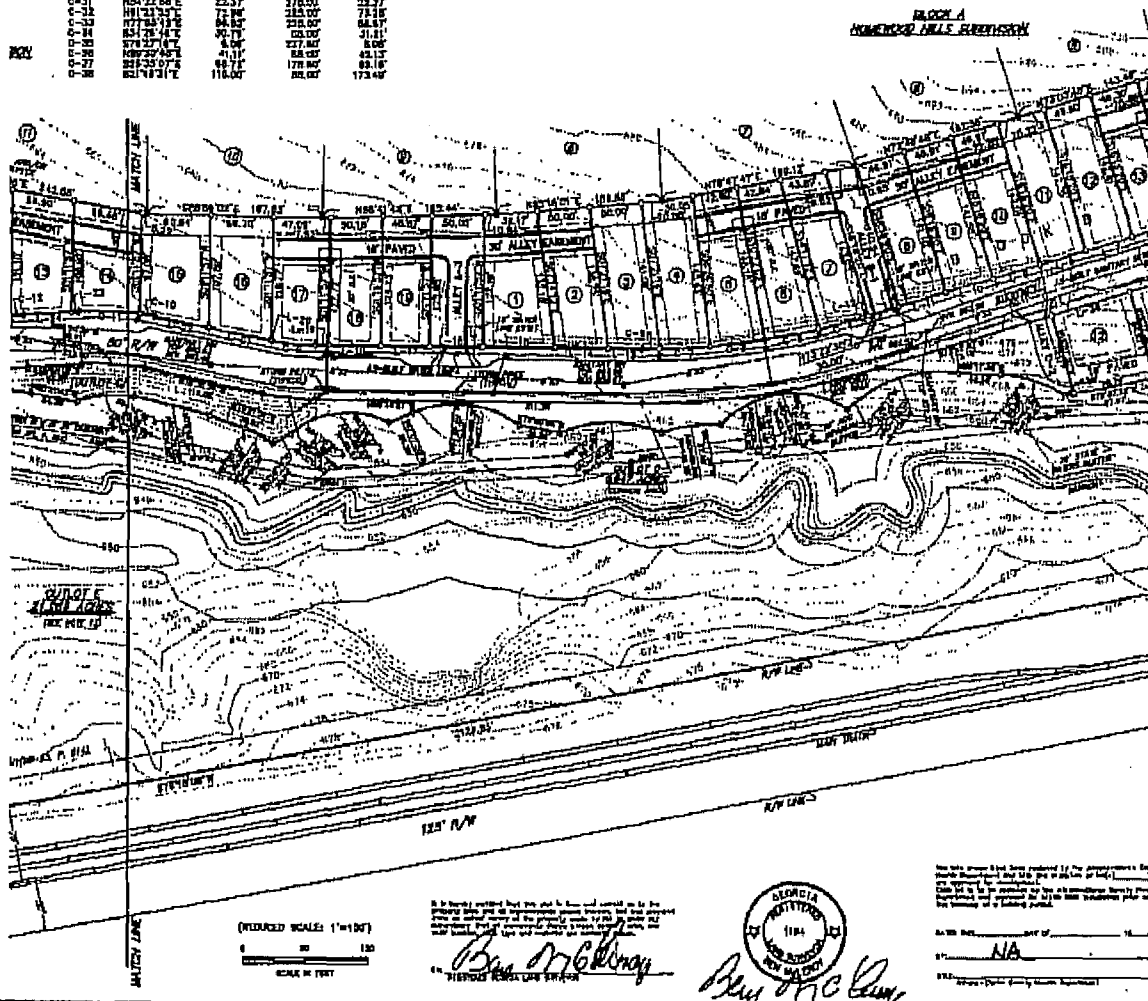
COURSE	BEARING	CHORD DISTANCE	WALKING	AND LENGTH
C-1	88°47'00"W	83.34	518.00	83.34
C-2	88°47'00"W	23.30	518.00	23.30
C-3	88°47'00"W	64.32	518.00	64.32
C-4	88°47'00"W	42.70	518.00	42.70
C-5	88°47'00"W	51.84	518.00	51.84
C-6	88°47'00"W	62.86	518.00	62.86
C-7	88°47'00"W	48.00	518.00	48.00
C-8	88°47'00"W	17.20	518.00	17.20
C-9	88°47'00"W	42.10	518.00	42.10
C-10	88°47'00"W	16.50	518.00	16.50
C-11	88°47'00"W	38.84	518.00	38.84
C-12	88°47'00"W	13.00	518.00	13.00
C-13	88°47'00"W	82.78	518.00	82.78
C-14	88°47'00"W	48.40	518.00	48.40
C-15	88°47'00"W	48.40	518.00	48.40
C-16	88°47'00"W	1.00	518.00	1.00
C-17	88°47'00"W	12.24	518.00	12.24
C-18	88°47'00"W	34.50	518.00	34.50
C-19	88°47'00"W	10.24	518.00	10.24
C-20	88°47'00"W	18.10	518.00	18.10
C-21	88°47'00"W	33.87	518.00	33.87
C-22	88°47'00"W	62.00	518.00	62.00
C-23	88°47'00"W	8.80	518.00	8.80
C-24	88°47'00"W	31.31	518.00	31.31
C-25	88°47'00"W	24.82	518.00	24.82
C-26	88°47'00"W	44.88	518.00	44.88
C-27	88°47'00"W	27.50	518.00	27.50
C-28	88°47'00"W	33.00	518.00	33.00
C-29	88°47'00"W	34.24	518.00	34.24
C-30	88°47'00"W	11.17	518.00	11.17
C-31	88°47'00"W	23.37	518.00	23.37
C-32	88°47'00"W	12.88	518.00	12.88
C-33	88°47'00"W	86.80	518.00	86.80
C-34	88°47'00"W	30.70	518.00	30.70
C-35	88°47'00"W	4.00	518.00	4.00
C-36	88°47'00"W	110.00	518.00	110.00

## LINE TABLE

COURSE	BEARING	DISTANCE	COURSE	BEARING	DISTANCE
L-1	88°47'00"W	15.44	L-34	88°47'00"W	44.07
L-2	88°47'00"W	58.50	L-35	88°47'00"W	87.40
L-3	88°47'00"W	30.27	L-36	88°47'00"W	2.10
L-4	88°47'00"W	48.80	L-37	88°47'00"W	43.11
L-5	88°47'00"W	48.80	L-38	88°47'00"W	48.17
L-6	88°47'00"W	48.80	L-39	88°47'00"W	43.00
L-7	88°47'00"W	48.80	L-40	88°47'00"W	21.77
L-8	88°47'00"W	48.80	L-41	88°47'00"E	23.15
L-9	88°47'00"W	48.80	L-42	88°47'00"E	18.80
L-10	88°47'00"W	48.80	L-43	88°47'00"E	43.90
L-11	88°47'00"W	48.80	L-44	88°47'00"E	31.23
L-12	88°47'00"W	8.00	L-45	88°47'00"E	64.10
L-13	88°47'00"W	22.11	L-46	88°47'00"E	70.20
L-14	88°47'00"W	80.98	L-47	88°47'00"E	84.17
L-15	88°47'00"W	80.98	L-48	88°47'00"E	47.50
L-16	88°47'00"W	80.98	L-49	88°47'00"E	3.71
L-17	88°47'00"W	48.63	L-50	88°47'00"E	10.00
L-18	88°47'00"W	11.40	L-51	88°47'00"E	10.41
L-19	88°47'00"W	1.17	L-52	88°47'00"E	18.21
L-20	88°47'00"W	82.84	L-53	88°47'00"E	17.00
L-21	88°47'00"W	02.44	L-54	88°47'00"E	48.17
L-22	88°47'00"W	6.70	L-55	88°47'00"E	

## NOTES

- (1) OWNER: COLLEGE DEVELOPMENT, L.L.C.
- (2) PROPOSED USE: SINGLE FAMILY RES.
- (3) PROPOSED WATER SUPPLY: AT-ROCK
- (4) PROPOSED SEWERAGE DISPOSAL: AT-ROCK
- (5) TO THE KNOWLEDGE OF THE TRAIL, H. ASHMOOD LAYED OUT THE LOTS.
- (6) FLOOD PLAIN INFORMATION WAS TAKEN FROM THE (1984) DATED 1.
- (7) TOTAL ADJACENT 35.00 ACRES
- (8) JOINDER: 25-25
- (9) JOINDER: 25-25
- (10) JOINDER: 25-25
- (11) JOINDER: 25-25
- (12) JOINDER: 25-25
- (13) JOINDER: 25-25
- (14) JOINDER: 25-25
- (15) JOINDER: 25-25
- (16) JOINDER: 25-25
- (17) JOINDER: 25-25
- (18) JOINDER: 25-25
- (19) JOINDER: 25-25
- (20) JOINDER: 25-25
- (21) JOINDER: 25-25
- (22) JOINDER: 25-25
- (23) JOINDER: 25-25
- (24) JOINDER: 25-25
- (25) JOINDER: 25-25
- (26) JOINDER: 25-25
- (27) JOINDER: 25-25
- (28) JOINDER: 25-25
- (29) JOINDER: 25-25
- (30) JOINDER: 25-25
- (31) JOINDER: 25-25
- (32) JOINDER: 25-25
- (33) JOINDER: 25-25
- (34) JOINDER: 25-25
- (35) JOINDER: 25-25
- (36) JOINDER: 25-25
- (37) JOINDER: 25-25
- (38) JOINDER: 25-25
- (39) JOINDER: 25-25
- (40) JOINDER: 25-25
- (41) JOINDER: 25-25
- (42) JOINDER: 25-25
- (43) JOINDER: 25-25
- (44) JOINDER: 25-25
- (45) JOINDER: 25-25
- (46) JOINDER: 25-25
- (47) JOINDER: 25-25
- (48) JOINDER: 25-25
- (49) JOINDER: 25-25
- (50) JOINDER: 25-25
- (51) JOINDER: 25-25
- (52) JOINDER: 25-25
- (53) JOINDER: 25-25
- (54) JOINDER: 25-25
- (55) JOINDER: 25-25
- (56) JOINDER: 25-25
- (57) JOINDER: 25-25
- (58) JOINDER: 25-25
- (59) JOINDER: 25-25
- (60) JOINDER: 25-25
- (61) JOINDER: 25-25
- (62) JOINDER: 25-25
- (63) JOINDER: 25-25
- (64) JOINDER: 25-25
- (65) JOINDER: 25-25
- (66) JOINDER: 25-25
- (67) JOINDER: 25-25
- (68) JOINDER: 25-25
- (69) JOINDER: 25-25
- (70) JOINDER: 25-25
- (71) JOINDER: 25-25
- (72) JOINDER: 25-25
- (73) JOINDER: 25-25
- (74) JOINDER: 25-25
- (75) JOINDER: 25-25
- (76) JOINDER: 25-25
- (77) JOINDER: 25-25
- (78) JOINDER: 25-25
- (79) JOINDER: 25-25
- (80) JOINDER: 25-25
- (81) JOINDER: 25-25
- (82) JOINDER: 25-25
- (83) JOINDER: 25-25
- (84) JOINDER: 25-25
- (85) JOINDER: 25-25
- (86) JOINDER: 25-25
- (87) JOINDER: 25-25
- (88) JOINDER: 25-25
- (89) JOINDER: 25-25
- (90) JOINDER: 25-25
- (91) JOINDER: 25-25
- (92) JOINDER: 25-25
- (93) JOINDER: 25-25
- (94) JOINDER: 25-25
- (95) JOINDER: 25-25
- (96) JOINDER: 25-25
- (97) JOINDER: 25-25
- (98) JOINDER: 25-25
- (99) JOINDER: 25-25
- (100) JOINDER: 25-25



After Recording-Return To:  
Michael J. McCleary, Esq.  
Fortson, Bentley and Griffin, P.A.  
P.O. Box 1744  
Athens, GA 30603-1744

Deed Doc: COVE  
Recorded 03/15/2006 08:15AM

Beverly Logan  
Clerk Superior Court, Athens-Clarke County, Ga.  
Bk 03054 Pg 0057-0058

**SECOND AMENDMENT TO DECLARATION OF COVENANTS,  
RESTRICTIONS AND EASEMENTS FOR THE COTTAGES AT HOMEWOOD**

THIS Second Amendment to the Declaration of Covenants, Restrictions and Easements for the Cottages at Homewood (the "Amendment") is made and entered into as of the 7<sup>th</sup> day of March, 2006.

**WITNESSETH:**

WHEREAS, Coldwater Development, LLC, a Georgia limited liability company and Chesser/Kennedy Builders, Inc., a Georgia corporation (hereinafter referred to as "Declarant") is the Declarant of that certain Declaration of Covenants, Restrictions and Easements for the Cottages at Homewood dated December 8, 2004, recorded in Deed Book 2796, page 21, in the Office of the Clerk of Superior Court of Athens-Clarke County, Georgia, as amended (hereinafter the "Declaration"); and

WHEREAS, in accordance with section 9.02 of the Declaration, Declarant currently retains the right to appoint and remove any directors and officers of the Association and Declarant desires to amend the Declaration by modifying some of the provisions contained therein.

NOW THEREFORE, Declarant hereby amends, modifies, alters and changes the Declaration as follows:

1. In Paragraph 6.08 entitled Fences, delete the second sentence in its entirety.
2. Except as amended hereby, the Declaration shall remain and be in full force and effect.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Declarant has executed this Amendment under seal the date first above written.

Signed, sealed and delivered,  
in the presence of:

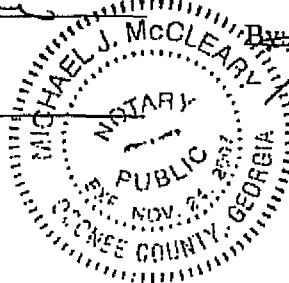
DECLARANT:

COLDWATER DEVELOPMENT, LLC

Adrian Stein  
Unofficial Witness  
Jeffrey R. Chesser (Seal)  
Jeffrey R. Chesser, Member/Manager

NOTARY PUBLIC

(Notary Seal)



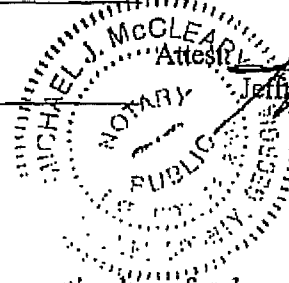
Signed, sealed and delivered,  
in the presence of:

CHESSER/KENNEDY BUILDERS, INC.

Adrian Stein  
Unofficial Witness  
Todd Kennedy  
Todd Kennedy, President

NOTARY PUBLIC

(Notary Seal)



Jeffrey R. Chesser  
Jeffrey R. Chesser, Secretary

[Corporate Seal]

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

IN WITNESS WHEREOF, the Association, acting through its duly authorized officers, has caused this Amendment to be executed and sealed on the date first above written.

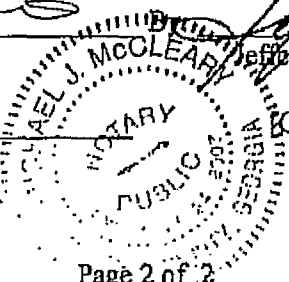
Signed, sealed and delivered,  
in the presence of:

THE COTTAGES AT HOMEWOOD  
HOMEOWNERS ASSOCIATION, INC.

Adrian Stein  
Unofficial Witness  
Jeffrey R. Chesser  
Jeffrey R. Chesser, President

NOTARY PUBLIC

[Corporate Seal]



After Recording-Return To:  
Fortson, Bentley and Griffin, P.A.  
2500 Danell's Bridge Road  
Building 200, Suite 3A  
Athens, GA 30606

**THIRD AMENDMENT TO DECLARATION OF COVENANTS,  
RESTRICTIONS AND EASEMENTS FOR THE COTTAGES AT HOMEWOOD**

THIS Third Amendment to the Declaration of Covenants, Restrictions and Easements for the Cottages at Homewood (the "Amendment") is made and entered into as of the 13th day of March, 2007.

**WITNESSETH:**

WHEREAS, Coldwater Development, LLC, a Georgia limited liability company and Chesser/Kennedy Builders, Inc., a Georgia corporation (hereinafter referred to as "Declarant") is the Declarant of that certain Declaration of Covenants, Restrictions and Easements for the Cottages at Homewood dated December 8, 2004, recorded in Deed Book 2796, page 21, in the Office of the Clerk of Superior Court of Athens-Clarke County, Georgia, as amended (hereinafter the "Declaration"); and

WHEREAS, in accordance with section 9.02 of the Declaration, Declarant currently retains the right to appoint and remove any directors and officers of the Association and Declarant desires to amend the Declaration by modifying some of the provisions contained therein.

NOW THEREFORE, Declarant hereby amends, modifies, alters and changes the Declaration as follows:

1. The Association hereby affirmatively elects to be governed by the Georgia Property Owners' Association Act, O.C.G.A. § 44-3-220, et seq.. The Association, its Members, the Declarant, and the Development shall hereafter be deemed to be submitted to the aforementioned Act.
2. The Declarant shall no longer have the right to appoint and remove members of the Board and Officers of the Association and hereby surrenders said authority in accordance with Section 3.08 of the Declaration.
3. Except as amended hereby, the Declaration shall remain and be in full force and effect.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Declarant has executed this Amendment under seal the date first above written.

Signed, sealed and delivered,  
in the presence of:

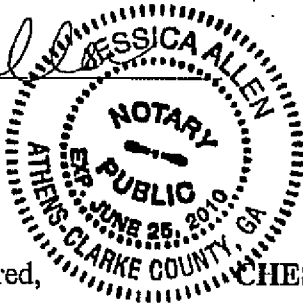
DECLARANT:

**COLDWATER DEVELOPMENT, LLC**

Lisa Patterson Culbertson  
Unofficial Witness

By: [Signature] (Seal)  
Jeffrey R. Chesser, Member/Manager

Jessica Allen  
NOTARY PUBLIC  
(Notary Seal)



Signed, sealed and delivered,  
in the presence of:

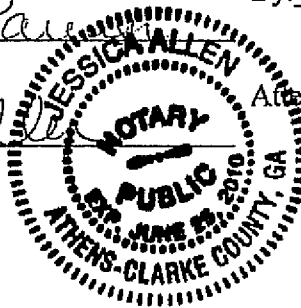
**CHESSER/KENNEDY BUILDERS, INC.**

Kenneth W. Paine  
Unofficial Witness

By: [Signature]  
Todd Kennedy, President

Jessica Allen  
NOTARY PUBLIC  
(Notary Seal)

Attest: [Signature]  
Jeffrey R. Chesser, Secretary



[Corporate Seal]

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

IN WITNESS WHEREOF, the Association, acting through its duly authorized officers, has caused this Amendment to be executed and sealed on the date first above written.

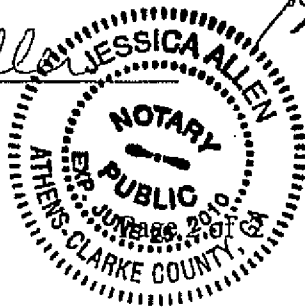
Signed, sealed and delivered,  
in the presence of:

**THE COTTAGES AT HOMEWOOD  
HOMEOWNERS ASSOCIATION, INC.**

Lisa Patterson Culbertson  
Unofficial Witness

By: [Signature]  
Jeffrey R. Chesser, President

Jessica Allen  
NOTARY PUBLIC  
(Notary Seal)



[Corporate Seal]



By-Laws of  
The Cottages at Homewood Homeowner's Association, Inc.

Article 1  
General

1.1 Applicability. These By-Laws provide for the self-governance of the Cottages at Homewood Homeowner's Association, Inc., in accordance with the Georgia Property Owners Act, the Articles of Incorporation filed with the Georgia Secretary of State, and the Declaration of Covenants, Restrictions and Easements for The Cottages at Homewood, recorded in the Athens-Clarke County, Georgia land records (the "Declaration").

1.2 Name. The name of the corporation is The Cottages at Homewood Homeowner's Association, Inc. (the "Association").

1.3 Principal Office. The principal office of the Association shall be located in the State of Georgia. The Association may have such other offices, either within or outside the State of Georgia, as the Board of Directors may determine or as the affairs of the Association may require.

1.4 Definitions. The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in the Declaration, as it may be amended, unless the context indicates otherwise.

Article 2.  
Association: Membership, Meetings, Quorum, Voting, Proxies

2.1 Membership. An Owner of a Unit shall automatically become a member of the Association as more fully set forth in the Declaration, the terms of which, pertaining to membership, are incorporated by this reference. If title to a Unit is held by more than one (1) person, the membership shall be shared in the same proportion as the title, but there shall be only one (1) membership and one (1) equally weighted vote per Unit, which vote shall be appurtenant to such Unit. In the event an Owner is a corporation, limited liability company, partnership, trust, or other legal entity not being a natural person or persons, then any natural person who is an officer, director, manager, partner, or trustee designated by the entity shall be eligible to represent such entity or entities in the affairs of the Association. Membership shall be appurtenant to the Unit and shall be transferred automatically by conveyance of that Unit and may be transferred only in connection with the transfer of title.

2.2 Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the members as may be designated by the Board, as convenient as is possible and practical.

2.3 Annual Meetings. The first meeting of the Association, whether a regular or special meeting, shall be held within one year from the date of incorporation of the Association. Subsequent regular meetings shall be held annually on a date and at a time set by the Board.

2.4 Special Meetings. The president may call special meetings. In addition, it shall be the duty of the president to call a special meeting if so directed by resolution of the Board or upon a petition signed by members representing at least twenty-five (25%) of the total Association vote.

2.5 Notice of Meetings. Written notice stating the place, day, and time of any meeting of the members shall be delivered, either personally or by mail, to each member entitled to vote at such meeting, not less than ten (10) nor more than sixty (60) days before the date of such meeting, by or at the direction of the president or the secretary or the officers or persons calling the meeting. In the case of a special meeting or when otherwise required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the member at its address as it appears on the records of the Association, with postage prepaid.

2.6 Waiver of Notice. Waiver of notice of a meeting of the members shall be deemed the equivalent of proper notice. Any member may, in writing, waive notice of any meeting of the members, either before or after such meeting. Attendance at a meeting by a member or the member's proxy shall be deemed waiver by such member of notice of the time, date, and place thereof, unless such member or proxy specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7 Adjournment of Meetings. Any meeting of the Association may be adjourned from time to time for periods not exceeding ten (10) days by vote of members holding a Majority of the votes represented at such meeting, regardless of whether a quorum is present. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice for reconvening the meeting shall be given to members prescribed for regular meetings.

2.8 Voting. The voting rights of the members shall be as set forth in the Declaration and in these By-Laws, and such voting rights provisions are specifically incorporated by this reference.

2.9 Proxies. At all meetings of members, each member may vote in person (if a corporation, limited liability company, partnership, trust, or other legal entity not being a natural person or persons, then through any officer, directors, manager, partner, or trustee duly authorized to act on behalf of the member) or by proxy, subject to the limitations of Georgia law. All proxies shall be in writing specifying the Units for which it is given, signed by the member or its duly authorized attorney-in-fact, dated and filed with the secretary of the Association, prior to any meeting for which it is to be effective. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid. Every proxy shall be revocable and shall automatically cease upon conveyance of any Unit for which it was given, or upon receipt of notice by the secretary of the death or judicially declared incompetence of a member who is a natural person, or of written revocation, or eleven (11) months from the date of the proxy, unless a shorter period is specified in the proxy.

2.10 Quorum. Except as otherwise provided in these By-Laws or in the Declaration, the presence, in person or by proxy, of members representing twenty percent (20%) of the total eligible votes in the Association shall constitute a quorum at all meetings of the Association. Except when a higher vote is required under the Declaration or these By-Laws, the vote of a Majority of the members present and eligible to vote shall constitute a decision of the Association. Owners whose voting rights have been suspended pursuant to the Declaration or these By-Laws shall not be counted in determining the total eligible votes or the establishment of a quorum.

2.11 Conduct of Meetings. The president shall preside over all meetings of the Association, and the secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

2.12 Action Without a Meeting. In the discretion of the Board, any action that may be taken at any annual, regular or special meeting of the members may be taken without a meeting if the Association delivers a written consent form or ballot to every member entitled to vote on the matter.

(a) A written ballot shall: (i) set forth each proposed action; and (ii) provide an opportunity to vote for or against each proposed action.

(b) Approval by written ballot pursuant hereto shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at the meeting authorizing the action, the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(c) All solicitations for votes by written ballot shall: (i) indicate the number of responses needed to meet the quorum requirements; (ii) state the percentage of approvals necessary to approve each matter other than election of directors; and (iii) specify the time by which a ballot must be received by the Association in order to be counted.

(d) A written ballot may not be revoked. The Association shall maintain such ballots in its file for a period of at least three (3) years.

### Article 3.

#### Board of Directors: Number, Powers, Meetings

##### A. Composition and Selection.

3.1 Governing Body: Composition. The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one (1) equal vote. Except with respect to directors appointed by the Declarant, the directors shall be residents or eligible members; provided, however, no two (2) residents representing the same Unit may serve on the Board at the same time. No Owner or resident shall be eligible to be elected to serve as a director if any assessment for such Person's Unit is delinquent. A "resident" shall be any natural person eighteen (18) years of age or older whose principal place of residence is a Unit within the Association. In the case of a member which is not a natural person, any officer, director, manager, partner, employee, or trust officer of such member shall be eligible to serve as a director, unless otherwise specified by written notice to the Association signed by such member, provided, no member may have more than one (1) such representative on the Board at a time, except in the case of directors appointed by the Declarant.

3.2 Number of Directors. The Board shall consist of up to three (3) directors, as, provided in Section 3.4 below.

3.3 Nomination and Election of Directors. Except with respect to directors appointed by the Declarant, directors shall be nominated from the floor and may also be nominated by a nominating committee, if such a committee is established by the Board: All candidates shall have a reasonable opportunity to communicate their qualifications to the members and to solicit votes. Each owner may cast the entire vote assigned to his or her Unit for each position to be filled. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms.

3.4 Election and Term of Office. Upon termination of the Declarant's right to appoint directors as provided in the Declaration, the number of directors shall be set at three (3), and the Association shall hold an election at which the members shall be entitled to elect all three (3) directors, with the two (2) directors receiving the largest number of votes being elected for a term of two (2) years and one (1) directors being elected for a term of one (1) year. Upon the expiration of the term of office of each initial director elected by the members, a successor shall be elected to serve a term of two (2) years, and all subsequent terms shall be for two (2) years. The directors elected by the members shall hold office until their respective successors have been elected.

3.5 Removal of Directors and Vacancies. Any director elected by the members may be

removed, with or without cause, by a Majority of the total Association vote. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the members to fill the vacancy for the remainder of the term of such director.

Any director elected by the members who has three (3) or more consecutive unexcused absences from Board meetings, or is more than thirty (30) days delinquent, or is the representative of a member who is more than thirty (30) days delinquent in the payment of any assessment or other charge due the Association, may be removed by a Majority of the directors present at a regular or special meeting at which a quorum is present, and the Board may appoint a successor to fill the vacancy until the next annual meeting, at which time the members shall elect a successor for the remainder of the term.

In the event of the death, disability, or resignation of a director elected by the members, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting; at which time the members shall elect a successor for the remainder of the term.

This section shall not apply to directors appointed by the Declarant. The Declarant shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability, or resignation of a director appointed by the Declarant, during the period in which the Declarant has the right to appoint directors.

#### B. Meetings.

3.6 Organizational Meetings. Within thirty (30) days after the election or appointment of new directors, the Board shall hold an organizational meeting at such time and place as the Board shall set.

3.7 Regular Meetings. Regular meetings of the Board may be held at such time and place as a Majority of the directors shall determine.

3.8 Special Meetings. Special meetings of the Board of Directors shall be held when called by the president or on written request of at least two (2) directors.

3.9 Notice. Notice of a regular meeting shall be communicated to directors not less than four (4) calendar days prior to the meeting. Notice of a special meeting shall be communicated to directors not less than two (2) days prior to the meeting. No notice need be given to any director who has signed a waiver of notice or a written consent to holding of the meeting. The notice shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered.

Notices shall be given to each director by: (a) personal delivery; (b) first class mail, postage prepaid; (c) telephone communication, either directly to the director or to a natural person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; (d) telecopier transmission in the director's home or office, with confirmation of receipt by receiving telecopier; (e) telegram, charges prepaid; (f) overnight or same day delivery, charges prepaid; or (g) electronic mail ("e-mail"), using Internet accessible equipment and services, if the director has provided the Board with an e-mail address.

All such notices shall be given at the director's telephone or telecopier number or sent to the director's address as shown on the records of the Association. Notices sent by first class mail

shall be deemed communicated when deposited into a United States mailbox. Notice given by personal, overnight or courier delivery, telephone, telecopier, telegraph, or e-mail shall be deemed communicated when delivered, telephoned, telecopied, e-mailed, or given to the telegraph company

3.10 Waiver of Notice. The transactions of any meeting of the Board, however called, shall be as valid as though taken at a meeting duly held after each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.11 Telephonic Participation in Meetings. Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment, by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this section shall constitute presence in person at such meeting.

3.12 Quorum of Board of Directors. At all meetings of the Board, a Majority of the directors shall constitute a quorum for the transaction of business, and the votes of a Majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these By-Laws or the Declaration. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a Majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a Majority of the directors present at such meeting may adjourn the meeting to a time not more than five (5) days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.13 Compensation. Directors shall not receive any compensation from the Association for acting as such unless approved by members representing at least a Majority of the total Association vote. Any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a Majority of the other directors. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director's interest was made known to the Board prior to entering into such contract and such contract was approved by a Majority of the Board of Directors, excluding the interested director.

3.14 Conduct of Meetings. The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book of Board meetings recording all Board resolutions and all transactions and proceedings occurring at such meetings.

3.15 Open Meetings. Subject to the provisions of Section 3.16, all meetings of the Board shall be open to all members, but members other than directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a director. In such

case, the President may limit the time any member may speak. Notwithstanding the above, the President may adjourn any meeting of the Board, reconvene in executive session, and exclude members to discuss matters of a sensitive nature.

3.16 Action Without a Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a Majority of the directors consent in writing to such action. Such written consent must describe the action taken and be filed with the minutes of the Board.

#### C. Powers and Duties.

3.17 Powers. The Board of Directors shall have all the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Declaration, these By-Laws, the Articles and as provided by law. The Board may do or cause to be done all acts and things as are not directed by the Declaration, the Articles, these By-Laws or Georgia law to be done and exercised exclusively by the membership generally.

3.18 Duties. The duties of the Board shall include, without limitation:

- (a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses;
- (b) levying and collecting such assessments from the Owners, as set forth in the Declaration;
- (c) providing for the operation, care, upkeep, and maintenance of those portions of the Common Elements as provided in the Declaration;
- (d) designating, hiring, and dismissing the personnel necessary to carry out the rights and responsibilities of the Association and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
- (e) depositing all funds received on behalf of the Association in a bank depository which it shall approve and using such funds to operate the Association; provided, any reserve fund may be deposited, in the director's best business judgment, in depositories other than banks;
- (f) making and amending rules and regulations for daily operation of the Association, in accordance with the Declaration;
- (g) opening of bank accounts on behalf of the Association and designating the signatories required;
- (h) making or contracting for the making of repairs, additions, and improvements to or alternations of the Common Elements in accordance with the Declaration and these By-Laws;
- (i) enforcing by legal means the provisions of the Declaration, these By-Laws, and the rules of the Association and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action;
- (j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof and filing and adjusting claims, as appropriate;

- (k) paying the cost of all services rendered to the Association;
- (l) keeping books with detailed accounts of the receipts and expenditures of the Association;
- (m) making available to any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Declaration, the Articles of Incorporation, the By-Laws, rules and all other books, records, and financial statements of the Association, as provided in Article 6, Section 6.7;
- (n) permitting utility suppliers to use portions of the Common Elements reasonably necessary to the ongoing development or operation of the Association; and
- (o) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnify is required or permitted under Georgia law, the Articles of Incorporation or the Declaration.

3.19 Management. Subject to the provisions of Fannie Mae Project Standards, Section 606.01, entitled "Professional Management Contracts", the Association may, but shall not be required to, hire a professional management agent or agents, at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board shall use reasonable efforts in any management contract to provide for termination of such contract, with or without penalty, upon no more than ninety (90) days' written notice.

3.20 Accounts and Reports The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

- (a) cash basis accounting, as defined by generally accepted accounting principles, shall be employed;
- (b) accounting and controls should conform to generally accepted accounting principles;
- (c) cash accounts of the Association shall not be commingled with any other accounts;
- (d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association;
- (e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board;
- (f) commencing at the end of the quarter in which the first Unit is sold and closed, financial reports shall be prepared for the Association at least quarterly. Such financial statements shall include an income statement reflecting all income and expense activity for the preceding period on an accrual basis and may include such other reports as deemed necessary by the Board; and
- (g) an annual financial report shall be made available to all members within one hundred and twenty (120) days after the close of the fiscal year and at each Association annual meeting. Such annual report may be prepared on an audited, reviewed or compiled basis, as the Board determines; provided, upon written request of any holder, guarantor or insurer of any first Mortgage on a Unit, or upon request of a Majority of the total Association shall provide an audited financial statement.

3.21 Borrowing. The Association shall have the power to borrow money for any legal purpose; provided, however, if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred



within the previous twelve (12) month period, exceeds or would exceed ten (10%) percent of the budgeted gross expenses of the Association for that fiscal year, the Board shall obtain the approval of members representing a Majority of the total Association vote, prior to borrowing such money.

3.22 Right to Contract. The Association, acting through the Board of Directors, shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or neighborhood and other owner; or residents associations, within and outside the Association.

### 3.23 Enforcement.

(a) Notice. Prior to imposition of any sanction requiring compliance with these procedures as set forth in the Declaration, the Board or its delegate shall serve the alleged violator with written notice including (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a statement that the alleged violator may present a written request for a hearing to the Board or its delegate within ten (10) days of the notice; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a request for a hearing is received within ten (10) days of the notice. If a timely request is not received, the sanction stated in the notice shall be imposed; provided, however, the Board or its delegate may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the ten (10) day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person. In the event of a continuing violation, each day the violation continues beyond the ten (10) day period shall constitute a separate offense, and fines may be imposed on a per diem basis without further notice to the violator. In the event of a violation which recurs within one (1) year from the date of any notice hereunder, the Board or its delegate may impose a sanction without further notice to the violator.

(b) Hearing. If a hearing is requested within the allotted ten (10) day period, the hearing shall be held before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or delegate who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. The Board may adopt a schedule of sanctions for violations of the Association Instruments.

## Article 4 Officers

4.1 Officers. The officers of the Association shall be a president, secretary, and treasurer. The president shall be elected from among the members of the Board; other officers may, but need not be members of the Board. The Board may appoint such other officers, including one or more vice presidents, one or more assistant secretaries and one or more assistant treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two or more officers may be held by the same person.

4.2 Election and Term of Office. The Board shall elect the officers of the Association at the first meeting of the Board following each annual meeting of the members, to serve until their successors are elected.

4.3 Removal and Vacancies. The Board may remove any officer, either with or without cause, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise for the unexpired portion of the term.

4.4 Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board of Directors. The president shall be the chief executive officer of the Association. The treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management, agent, or both. The secretary shall keep the minutes of all meetings of the Association and Board of Directors and have charge of such books and papers as the Board of Directors may direct.

4.5 Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the president, or the secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.6 Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two officers or by such other person or persons as may be designated by Board resolution.

4.7 Compensation. Compensation of officers shall be subject to the same limitations as compensation of directors under Article 3, Section 3.13.

## Article 5 Committees

The Board may appoint such committees as it deems appropriate to perform tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

## Article 6 Miscellaneous

6.1 Fiscal Year. The fiscal year of the Association shall be the calendar year unless the Board establishes a different fiscal year by resolution.

6.2 Parliamentary Rules. Except as may be modified by Board resolution, Robert's Rules of Order Newly Revised (current edition) shall govern the conduct of Association proceedings when not in conflict with Georgia law, the Articles of Incorporation, the Declaration, or these By-Laws.

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

6.4 Severability. The invalidity of any part of these By-Laws shall not impair or affect in any manner the validity, enforceability, or effect the balance of these By-Laws or the Declaration.

6.5 Gender and Grammar. The use of the masculine gender in these By-Laws shall be deemed to include the feminine gender, and the use of the singular shall be deemed to include the plural whenever the context so requires.

6.6 Financial Review. A financial review of the accounts of the Association shall be performed annually in a manner provided by the Board, and a financial statement shall be prepared and presented to the members at the annual meeting. However, after having received the Board's financial statement review at the annual meeting, the members may, by a Majority of the total Association vote, require that the accounts of the Association be audited, as a Common Expense, by an independent accountant. Such statement shall be made available to the holder, insurer, or guarantor of any first Mortgage on a Unit upon submission of a written request, and must be available within one hundred and twenty (120) days after the fiscal year end of the Association.

6.7 Books and Records.

(a) Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer, or guarantor for a first Mortgage on a Unit, any member, any Person who has executed a binding contract for the purchase of a Unit, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Unit: the Declaration, By-Laws, and Articles of Incorporation, any amendments to the foregoing, the rules of the Association, books of account, the minutes of meetings of the members, the Board, and committees, and the Association's corporate books and records. The Board shall provide for such inspection to take place at the office of the Association or at such other place within the Association as the Board shall designate.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing copies of documents requested.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the expense of the Association.

6.8 Notices. Except as otherwise provided in the Declaration or these By-Laws, all notices, demands, bills, statements, and other communications under the Declaration or these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

(a) if a member, at the address which the member has designated in writing and filed with the secretary or, if no such address has been designated, at the address of the Unit of such member; or

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

6.9 Amendment. Except where a higher vote is required for action under a particular provision of the Declaration or these By-Laws, in which case such higher vote shall be necessary to amend, these By-Laws may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the members holding sixty-seven (67%) of the total vote of the Association. As long as the Declarant has the right to appoint directors of the Association as provided in the Declaration, any amendment to these By-Laws shall also require the written consent of the Declarant. Notice of any meeting which an amendment will be considered shall state the fact and the subject matter of the proposed amendment. No amendment shall become effective until it is certified by the president and secretary of the Association and recorded in the Athens-Clarke County, Georgia land records. Any amendment duly certified and recorded shall be conclusively presumed to have been fully adopted in accordance with the By-Laws. Any action to challenge the validity of an amendment adopted under this section must be brought within one (1) year of the amendment's effective date. No action to challenge any such amendment may be brought after such time.