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STATE OF GEORGIA  
COUNTY OF GWINNETT

Reference: Deed Book: 9559  
Page: 9

**AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
WOODEHAVEN AT CHATTAHOOCHEE CROSSING**

WHEREAS, the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Woodehaven was recorded on November 9, 1993, in Deed Book 9559, Page 9, *et seq.*, Gwinnett County, Georgia Records, and re-recorded on December 6, 1993, in Deed Book 9687, Page 87, *et seq.*, aforesaid records (hereinafter referred to as the “Original Declaration”), as may be amended; and

WHEREAS, Paragraph 20 of the Original Declaration provides that the Original Declaration may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the members of the Woodehaven at Chattahoochee Crossing Property Owner’s Association, Inc. (“Association”), holding two-thirds (2/3) of the total vote thereof; and

WHEREAS, members of the Association holding two-thirds (2/3) of the total vote thereof desire to amend the Original Declaration and have approved this Amendment; and

WHEREAS, in accordance with Article VI, Section 8 of the Bylaws of Woodehaven at Chattahoochee Crossing Property Owner’s Association, Inc. (“Original By-Laws”), the Original By-Laws may be amended by the affirmative vote, written consent, or combination thereof, of members holding a majority of the votes of persons present in person or by proxy at a duly called Association meeting; and

WHEREAS, members of the Association holding a majority of the votes held my members voting in person or by proxy at a duly called meeting, or by written consent, desire to amend the Original By-Laws and have approved this amendment;

NOW, THEREFORE, the Original By-Laws and the Original Declaration, and all exhibits thereto, are hereby stricken in their entirety and the following is simultaneously substituted therefor:

Woodehaven at Chatt -Docs- Decl & By-Laws- Final Prep - C.doc(JSL)

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**THIS AMENDMENT SUBMITS THE PROPERTY TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNERS' ASSOCIATION ACT, O.C.G.A. SECTION 44-3-220, ET SEQ.**

**CLOSING ATTORNEYS SHOULD CONTACT THE ASSOCIATION FOR ESTOPPEL CERTIFICATES REGARDING BOTH ASSESSMENTS/CHARGES DUE ON LOTS AND ANY UNCURED ARCHITECTURAL VIOLATIONS OR UNAUTHORIZED IMPROVEMENTS ON LOTS, PURSUANT TO THE PROVISIONS HEREOF.**

**AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
WOODEHAVEN AT CHATTAHOOCHEE CROSSING**

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**AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
WOODEHAVEN AT CHATTAHOOCHEE CROSSING**

1. **NAME.**

The name of the property is Woodehaven at Chattahoochee Crossing, which is a residential property owners' development which hereby submits to the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, *et seq.* (Michie 1982), as may be amended.

2. **DEFINITIONS.**

Generally, terms used in this Declaration, the Bylaws, and the Articles of Incorporation shall have their normal, generally accepted meanings or the meanings given in the Act or the Georgia Nonprofit Corporation Code. Unless the context otherwise requires, certain terms used in this Declaration, the Bylaws, and the Articles of Incorporation shall be defined as follows:

- (a) **Act** means the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, *et seq.* (Michie 1982), as may be amended.
- (b) **Architectural Control Committee** or **ACC** means the committee established to exercise the architectural review powers set forth in Paragraph 10 hereof.
- (c) **Area of Common Responsibility** means the Common Property, together with any areas which become the Association's responsibility under this Declaration or by contract or agreement with any other Person. Public rights-of-way within or adjacent to the Property, may be considered by the Board to be part of the Area of Common Responsibility.
- (d) **Articles of Incorporation** or **Articles** mean the Articles of Incorporation of Woodehaven at Chattahoochee Crossing Property Owner's Association, Inc., filed with the Secretary of State of the State of Georgia.
- (e) **Association** means Woodehaven at Chattahoochee Crossing Property Owner's Association, Inc., a Georgia nonprofit corporation, its successors or assigns.
- (f) **Association Legal Instruments** means this Declaration and all exhibits hereto, including the Association's Bylaws, and the plats, all as may be supplemented or amended.
- (g) **Board of Directors** or **Board** means the elected body responsible for management and operation of the Association.
- (h) **Bylaws** mean the Bylaws of Woodehaven at Chattahoochee Crossing Property Owner's Association, Inc., attached to this Declaration as Exhibit "B" and incorporated herein by this reference.
- (i) **Common Property** means any and all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners.
- (j) **Common Expenses** mean the expenses anticipated or actually incurred by the Association in maintaining, repairing, replacing, and operating the Common Property and otherwise for the benefit of all Lots.

- (k) **Community-Wide Standard** means the standard of conduct, maintenance, or other activity generally prevailing in the Property. Such standard may be more specifically determined by the Board and the ACC.
- (l) **Domestic Partner** shall mean any adult who cohabitates with an Owner, and who has been designated as the Owner's Domestic Partner in a written statement, signed by the Owner and filed with the Association's Secretary. A person shall no longer be a Domestic Partner upon the Secretary's receipt of a written termination notice, signed by either the Owner or the Domestic Partner.
- (m) **Effective Date** means the date that this Declaration is recorded in the Gwinnett County, Georgia land records.
- (n) **Electronic Record** means information created, transmitted, received, or stored by electronic means and retrievable in human perceivable form.
- (o) **Electronic Signature** means a signature created, transmitted received, or stored by electronic means and includes but is not limited to a Secure Electronic Signature.
- (p) **Eligible Mortgage Holder** means a holder of a first Mortgage secured by a Lot who has requested in writing notice of certain items under Paragraph 16(c) hereof.
- (q) **Lot** means a portion of the Property intended for ownership and use as a single-family dwelling site as permitted in this Declaration and as shown on the plats for the Property, or amendments or supplements thereto, recorded in the Gwinnett County, Georgia land records. Window screens, shutters, window boxes, awnings, exterior lights and light fixtures, gutters and downspouts, eaves, chimneys, doorsteps, porches (screened, enclosed, or open), decks, balconies, courtyards, patios and all other fixtures, equipment, and appliances located in or attached to each lot and the fee simple townhouse structure and appurtenant garage or carport located thereon, including, without limitation, the heating and air-conditioning systems for each townhouse, are deemed to be a part of such Lot, even though such improvements protrude beyond the physical property line boundaries of a Lot, regardless of whether or not any such fixtures, equipment, appliances, or improvements actually touch the ground of an adjoining lot or merely protrude over such adjoining Lot. If any chutes, flues, ducts, conduits, wires, pipes, plumbing, or any other apparatus or facilities for the furnishing of utilities or other services to a Lot lie partially within and partially outside of the designated boundaries of the Lot, and portions thereof which serve only that Lot shall be deemed to be a part of that Lot, and any portions thereof which serve more than one Lot or more than one townhouse shall be deemed to be a part of all such Lots which are served by such chutes, flues, ducts, conduits, wires, pipes, plumbing or other apparatus or facilities for the furnishing of utilities or other services.
- (r) **Lot Easement Area** shall mean the following portions of the Lot, which are intended to serve or benefit the community at large, including:
- (i) All landscaped areas on the Lot, including: (A) lawn grass areas, and (B) any sidewalks, pathways or gazebos on the Lot; and
  - (ii) To the extent that any chutes, flues, ducts, conduits, wires, pipes, plumbing or other apparatus or facilities for the furnishing of utilities are located within the Lot Easement Area described above and are designed to service the Lot Easement Area for security lighting, irrigation systems, or similar purposes, then such chutes, flues, ducts, conduits, wires, pipes, plumbing or other apparatus or facilities shall be a part of the Lot Easement Area.
- The Lot Easement Area does not include those other portions of the Lot which are intended for the exclusive use of the Owner or Occupant of such Lot, such as: (1) the dwelling on the Lot; (ii) any carport appurtenant to such dwelling; (iii) any doorsteps, porch, deck, balcony or patio on the Lot; and (iv) any fences, walls or other privacy structures surrounding any patios, decks, or courtyards.

- (s) **Majority** means those eligible votes, Owners, or other group as the context may indicate totaling more than fifty (50%) percent of the total eligible number.
- (t) **Mortgage** means any mortgage, deed to secure debt, deed of trust, or other transfer or conveyance for the purpose of securing the performance of an obligation, including, but not limited to, a transfer or conveyance of fee title for such purpose.
- (u) **Mortgagee** or **Mortgage Holder** means the holder of any Mortgage.
- (v) **Occupant** means any Person occupying all or any portion of a dwelling on a Lot as his or her primary or principal residence for any period of time, regardless of whether such Person is a tenant or the Owner of such property.
- (w) **Officer** means an individual who is elected by the Board to serve as President, Vice President, Secretary, or Treasurer, or such other subordinate officers as the Board may determine necessary.
- (x) **Owner** means the record title holder of a Lot, but shall not include a Mortgage Holder. For purposes hereof, the holder of a tax deed on a Lot shall be deemed the Owner thereof, notwithstanding the fact that there may exist a right of redemption on such Lot.
- (y) **Person** means any individual, corporation, firm, association, partnership, trust, or other legal entity.
- (z) **Property** means that real estate which is submitted to the Act and the provisions of this Declaration, as described in Exhibit "A" attached hereto and incorporated herein by reference. The Property is a residential property owners development which hereby submits to the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, et seq. (Michie 1982), as may be amended.
- (aa) **Secure Electronic Signature** means an electronic or digital method executed or adopted by a party with the intent to be bound by our to authenticate a record, which is unique to the person using it, is capable of verification, is under the sole control of the person using it, and is linked to data in such a manner that if the data are changed, the Electronic Signature is invalidated.

3. **LOCATION, PROPERTY DESCRIPTION, AND PLATS.**

The Property subject to this Declaration and the Act is located in Land Lots 321, 322 and 326 of the 6th District of Gwinnett County, Georgia, being more particularly described in Exhibit "A" attached to this Declaration, which exhibit is specifically incorporated herein by this reference. Plats of survey relating to the Property have been filed in Plat Book 27, Page 203; Plat Book 36, Page 7; Plat Book 36, Page 8; and Plat Book 1, Page 244, of the Gwinnett County, Georgia records. The plats of survey are incorporated herein by reference as fully as if the same were set forth in their entirety herein.

4. **ASSOCIATION MEMBERSHIP AND VOTING RIGHTS.**

- (a) **Membership.** Every Owner shall be deemed to have a membership in the Association. This is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one (1) membership per Lot owned. In the event of multiple Owners of a Lot, votes and rights of use and enjoyment shall be as provided in this Declaration and in the Bylaws. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a member or the member's spouse or Domestic Partner, but in no event shall more than one (1) vote be cast or more than one (1) office held for each Lot owned.
- (a) **Voting.** Members shall be entitled to one (1) equal vote for each Lot owned. When more than one (1) Person holds an ownership interest in any Lot, the vote for such Lot shall be exercised

as those Owners determine among themselves and advise the Secretary prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended if more than one (1) Person seeks to exercise it.

5. **ALLOCATION OF LIABILITY FOR COMMON EXPENSES.**

- (a) **General Allocations.** Except as provided below, or elsewhere in the Act or the Association Legal Instruments, the amount of all Common Expenses shall be assessed against all the Lots equally.
- (b) **Specific Special Assessments.** Notwithstanding the above, the Board of Directors shall have the power to levy specific special assessments pursuant to this Paragraph and to Section 44-3-225(a) of the Act as, in its discretion, it shall deem appropriate. Failure of the Board to do so shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to do so in the future.
  - (i) Except for expenses incurred for maintenance and repair of items which are the Association's maintenance responsibility hereunder, any Common Expenses benefiting less than all of the Lots or significantly disproportionately benefiting all Lots may be specially assessed equitably among all of the Lots which are benefited according to the benefit received.
  - (ii) Any Common Expenses occasioned by the conduct of less than all of those entitled to occupy all of the Lots or by the licensees or invitees of any such Lot or Lots may be specially assessed against such Lot(s), including attorney's fees incurred by the Association in enforcing the Declaration, Bylaws or Association rules.

For purposes of this subparagraph, nonuse shall constitute a benefit to less than all Lots or a significant disproportionate benefit among all Lots only when such nonuse results in an identifiable, calculable reduction in cost to the Association.

6. **ASSOCIATION RIGHTS AND RESTRICTIONS.**

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

- (a) to make and to enforce reasonable rules and regulations governing the use of the Property, including the Lots and the Common Property;
- (b) to enforce use restrictions, other Declaration and Bylaws provisions, and rules and regulations by imposing reasonable monetary fines, exercising self-help powers, suspending use and voting privileges, and suspending services paid for as a Common Expense, as provided herein and in Section 44-3-223 of the Act. These powers, however, shall not limit any other legal means of enforcing such documents or provisions by either the Association or, in an appropriate case, by an aggrieved Owner;
- (a) to grant permits, licenses, utility easements, and other easements, permits or licenses necessary for the proper maintenance or operation of the Property under, through or over the Common Property and Lot Easement Areas, as may be reasonably necessary to or desirable for the ongoing development and operation of the Property;
- (b) to control, manage, operate, maintain, replace and, in the Board's discretion, alter or improve all portions of the Property for which the Association is assigned maintenance responsibility under this Declaration;
- (c) to deal with the Common Property in the event of damage or destruction as a result of casualty loss, condemnation or eminent domain, in accordance with the provisions of this Declaration;

- (d) to represent the Owners in dealing with governmental entities on matters related to the Common Property;
- (e) to permanently or temporarily close access to any portion of the Common Property with, except in emergency situations, thirty (30) days prior notice to all Owners. However, except for seasonal closing of the pool, the Owners may re-open the closed Common Property by a majority vote of the total Association vote, cast at a duly called special or annual meeting;
- (f) to enter into Lots for maintenance, emergency, security, or safety purposes, or otherwise to discharge or exercise its powers or responsibilities hereunder, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all police officers, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be only during reasonable hours and after reasonable notice to the Owner or Occupant of the Lot. For purposes hereof, any water or other utility leak, fire, strong foul odor, obvious insect infestation or sounds indicating that a person or animal might be injured or sick and require immediate medical attention shall be considered emergencies justifying immediate entry into a dwelling. No Person exercising the rights granted in this subparagraph shall be liable for trespass, damages, or in any other manner by virtue of exercising such rights, and failure to exercise any such rights or to exercise such rights in a timely manner shall not create liability to any such Person, it being agreed that no such duty exists; and
- (g) to acquire, lease, hold, and dispose of tangible and intangible personal property and real property.

7. **ASSESSMENTS.**

- (a) **Purpose of Assessment.** The Association shall have the power to levy assessments as provided herein and in the Act. The assessments for Common Expenses provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of Lots, as may be authorized by the Board.
- (b) **Creation of the Lien and Personal Obligation For Assessments.** Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges; (ii) special assessments provided for below; (iii) Capital Contribution Assessments provided for below, and (iv) specific special assessments levied by the Board hereunder against any particular Lot, including, but not limited to, reasonable fines imposed hereunder and assessments levied under Paragraph 5(b) hereunder.

All such assessments, together with charges, interest, costs, and reasonable attorney's fees actually incurred, and if the Board so elects, rents, in the maximum amount permitted under the Act, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each assessment is made. Such amounts shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the assessment fell due. Each Owner and his or her grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance. The Association, in the Board's discretion, may, but shall not be obligated to, record a notice of such lien in the Gwinnett County, Georgia records evidencing the lien created under the Act and this Declaration.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board. No Owner may exempt himself or herself from liability, or otherwise withhold payment of assessments, for any reason whatsoever, including, but not limited to, nonuse of the Common Property, the Association's failure to provide services or perform its obligations required hereunder, or inconvenience or discomfort arising from the Association's performance of its duties.

The lien provided for herein shall have priority as provided in the Act.

- (a) **Delinquent Assessments.** All assessments and related charges not paid on or before the due date shall be delinquent, and the Owner shall be in default.

- (i) If the annual assessment or any part or installment thereof is not paid in full within fifteen (15) days of the due date, or such later date as may be provided by the Board, a late charge equal to the greater of ten (\$10.00) dollars or ten (10%) percent of the amount not paid, or such higher amounts as may be authorized by the Act, may be imposed without further notice or warning to the delinquent Owner, and interest at the rate of ten (10%) percent per annum, or such higher rate as permitted by the Act, shall accrue from the due date.
  - (ii) If part payment of assessments and related charges is made, the amount received may be applied by the Board, in respective order, to costs and attorney's fees, late charges, interest, delinquent assessments, and current assessments.
  - (iii) If the Board permits payment of the annual assessments or any special assessment in installments, and assessments, fines or other charges, or any part thereof, due from an Owner remain delinquent and unpaid for more than fifteen (15) days from the date due, then the Board may accelerate and declare immediately due all of that Owner's unpaid installments of the annual assessment and any special assessment with thirty (30) days written notice. Upon acceleration, that Owner shall thereby lose the privilege of paying the annual assessment in installments for that fiscal year, and of paying any special assessment in installments, unless reinstated in the Board's discretion.
  - (iv) If assessments, fines or other charges, or any part thereof, remain unpaid more than thirty (30) days after the assessment payments first become delinquent, the Association, acting through the Board, may institute suit to collect all amounts due pursuant to the provisions of the Declaration, the Bylaws, the Act and Georgia law, including reasonable attorney's fees actually incurred, and suspend the Owner's and Occupant's right to use the Common Property (provided, however, the Board may not deny ingress or egress to or from the Lot).
  - (v) If any assessment, fine or other charge is delinquent for thirty (30) days or more, in addition to all other rights provided herein and in the Act, the Association shall have the right upon thirty (30) days written notice, and in compliance with any requirements set forth in the Act, to suspend any utility services paid for as a Common Expense, including, but not limited to, water service and cable television, to that Lot until such time as the delinquent assessments and all costs incurred by the Association pursuant to this Paragraph, including reasonable attorney's fees, are paid in full. Any costs incurred by the Association in discontinuing and/or reconnecting any utility or other service, including reasonable attorney's fees, shall be an assessment against the Lot.
- (b) **Computation of Operating Budget and Assessment.** Prior to the beginning of each fiscal year, the Board shall prepare a budget covering the estimated costs of operating the Property during the coming year, and the Board shall establish the annual assessment or installments for the coming year. The Board shall cause the budget and notice of the assessment(s) to be delivered to each member at least twenty (21) days prior to the Association's annual meeting. The budget and the assessment shall become effective unless disapproved at a duly called Association annual meeting by a vote of a majority of the total Association membership. If a quorum is not obtained at the annual meeting, the budget shall become effective even though a vote to disapprove the budget could not be called at this meeting.

If the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for the succeeding year, then, until a budget is determined as provided herein, the budget in effect for the current year shall continue for the succeeding year. However, the Board may propose a new or adjusted budget at any time during the year by causing the proposed budget and assessment to be delivered to the members at least thirty (30) days prior to the proposed effective date thereof. Unless a special meeting is requested by the members, as provided in the Bylaws for special meetings, the new or adjusted budget and assessment shall take effect without a meeting of the members.

The budget shall not operate as a limitation on expenditures by the Board, but, rather, the budget is merely an estimate of Common Expenses on which the Board may base the annual assessments.

- (c) **Special Assessments.** In addition to the annual assessment provided for in subparagraph (b) above and assessments authorized under Paragraphs 5(b) and 9(b) hereof, the Board may at any time levy a special assessment against all Owners, with notice thereof sent to all Owners. However, any special assessment which would cause the total of special assessments levied against any Lot in one calendar year to exceed two hundred (\$200.00) dollars first must be approved by at least two-thirds (2/3) of those Owners either voting by ballot or written consent under Article II, Section 8 of the Bylaws, or present or represented by proxy at a duly called special or annual meeting of the members, notice of which shall specify that purpose.
- (d) **Capital Budget and Contribution.** The Board may prepare an annual or multi-year capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect both to amount and timing by equal annual assessments over the period of the budget. The capital contribution required, if any, shall be fixed by the Board and included within the budget and assessment as provided in subparagraph (d) above.
- (e) **Capital Contribution Assessment Upon Transfer of Lots.** In addition to the annual, specific, special and other assessments provided for herein, the purchaser or grantee of every Lot shall be assessed and be subject to a non-refundable, non-prorated capital contribution assessment ("Capital Contribution Assessment") upon any and each conveyance or transfer of the Lot to any person other than to the spouse or heir of the Owner. The Capital Contribution Assessment shall be in an amount equal to two months' assessments applicable to such Lot at the time of such conveyance or transfer. The Capital Contribution assessment shall not constitute an advance payment of annual assessments. The Capital Contribution Assessment shall be due and payable at the time of each such conveyance or transfer, and the Assessment shall be collected at the closing of each such conveyance or transfer.
- (f) **Statement of Account.** Any Owner, Mortgagee, or a Person having executed a contract for the purchase of a Lot, or a lender considering a loan to be secured by a Lot, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments due and unpaid, including any late charges, interest, fines, or other charges against such Lot. The Association shall respond in writing within five (5) business days of receipt of the request for a statement; provided, however, the Association may require the payment of a fee, not exceeding ten (\$10.00) dollars or such higher amount as may be authorized under the Act, as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Lot as of the date specified therein.
- (g) **Surplus Funds and Common Profits.** Common profits from whatever source shall be applied to the payment of Common Expenses. Any surplus funds remaining after the application of such common profits to the payment of Common Expenses shall, at the Board's option, either be distributed equally to the Owners or credited to the next assessment chargeable to the Owners, or added to the Association's reserve account.

8. **INSURANCE.**

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

- (b) **Association Liability and Directors' and Officers' Liability Insurance.** The Board shall obtain a public liability policy applicable to the Common Property and Lot Easement Areas covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents in their capacities as such, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least one million (\$1,000,000.00) dollars.
- (c) **Premiums and Deductible on Association Policies.** Premiums for all insurance obtained by the Association shall be a Common Expense of the Association. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.
- (d) **Policy Terms.** All such insurance coverage obtained by the Board shall be written in the name of the Association, as trustee, for the respective benefited parties, as further identified in subparagraph (ii) below. Such insurance shall be governed by the provisions hereinafter set forth:
- (i) All policies shall be written with a company licensed to do business in Georgia.
  - (i.i) All policies on the Common Property and Lot Easement Areas shall be for the benefit of the Association and its members. Any policies covering improvements on Lots shall be for the benefit of Lot Owners and their Mortgagees, as their interests may appear.
  - (iii) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.
  - (iv) In no event shall the insurance coverage obtained and maintained by the Board hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.
  - (v) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available, and all insurance policies shall be reviewed annually by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the county where the Property is located.
  - (vi) The Board shall be required to make reasonable effort to secure insurance policies that will provide for the following:
    - (1) a waiver of subrogation by the insurer as to any claims against the Board, the Association's manager, the Owners and their respective tenants, servants, agents, and guests;
    - (2) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;
    - (3) a provision that no policy may be canceled, invalidated, suspended or subjected to nonrenewal on account of any one or more individual Owners;
    - (4) a provision that no policy may be canceled, invalidated, suspended, or subjected to nonrenewal on account of any defect or the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee;
    - (5) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(6) that no policy may be canceled or substantially modified or subjected to nonrenewal without at least thirty (30) days' prior written notice to the Association.

(b) **Additional Association Insurance.** In addition to the other insurance required by this Paragraph, the Board shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds or dishonesty insurance. The amount of fidelity coverage or dishonesty insurance shall be determined in the directors' best business judgment, but if reasonably available, shall not be less than three (3) months assessments plus a reasonable amount to cover all or a reasonable portion of reserve funds in the custody of the Association at any time during the term of the bond; provided, however, fidelity coverage herein required may be reduced based on financial controls which take one or more of the following forms: (a) the Association or management company, if any, maintains a separate bank account for the working account and the reserve account, each with appropriate access controls and the bank in which funds are deposited sends copies of the monthly bank statements directly to the Association; (b) the management company, if any, maintains separate records and bank accounts for each association that uses its services and the management company does not have the authority to draw checks on, or to transfer funds from, the Association's reserve account; or (c) two Board members must sign any checks written on the reserve account. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled, substantially modified, or subjected to nonrenewal without at least thirty (30) days' prior written notice to the Association. The Association shall also obtain construction code endorsements, steam boiler coverage, and flood insurance, if and to the extent necessary to satisfy the requirements of the Federal National Mortgage Association.

(c) **Individual Lot Owner Insurance.** The Association's casualty policy is not required to cover improvements or betterments made to Lots by Owners, or any personal property of Owners, and such items shall not be covered unless the Board advises Owners of such coverage in writing. If the Association does not maintain such insurance, then each Owner should carry such insurance on improvements and betterments made to the Lot and personal property, and, if the Owner elects not to do so, he or she does so at his or her own risk.

(d) **Insurance Deductibles.** In the event of an insured loss under the Association's casualty policy, any required deductible shall be considered a maintenance expense to be paid by the Person(s) who would be responsible for such loss in the absence of insurance. If the loss affects more than one Lot or a Lot and the Common Property, the cost of the deductible may be apportioned and assessed equitably by the Board among the parties suffering loss in accordance with the total cost of repair, or otherwise as the Board reasonably determines equitable, unless the insurance policy provides that the deductible will apply to each Lot separately. If any Owner fails to pay the deductible when required hereunder, then the Association can pay the deductible and assess the cost to the Owner or Owners pursuant to Paragraphs 5(b) and 7 hereof

(e) **Payment of Claims to Delinquent Owners.** Notwithstanding anything to the contrary herein, in the event of an insured loss under the Association's master hazard insurance policy for which the Association receives from the insurer payment for a loss sustained by an Owner who is delinquent in the payment of assessments owed to the Association under Paragraph 7 hereof, then the Association may retain and apply such proceeds to the delinquency. Any surplus remaining after application of the proceeds to any delinquency shall be paid by the Association to the affected Owner.

9. **REPAIR AND RECONSTRUCTION AFTER CASUALTY DAMAGE.**

In the event of damage to or destruction of all or any part of the Property insured by the Association as a result of fire or other casualty, unless eighty (80%) percent of the Lot Owners, including the Owner(s) of any damaged Lot(s), vote not to proceed with the reconstruction and repair of the structure, the Board or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the structure. In the event of substantial damage or destruction, each institutional holder of a first Mortgage shall be entitled to written notice of the damage, and nothing in these documents shall be construed to afford a priority to any Lot Owner with respect to the distribution of proceeds to any such Lot.

- (a) **Cost Estimates.** Immediately after a fire or other casualty causing damage to portions of the Property insured by the Association, the Board shall obtain reliable and detailed estimates of the cost of repairing and restoring the structures including any damaged Lot to substantially the condition which existed before such casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Such costs may also include professional fees and premiums for such bonds as the Board determines to be necessary.
- (a) **Source and Allocation of Proceeds.** If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair, as determined by the Board, or if at any time during the reconstruction and repair or upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, a special assessment shall be made against all of the Lot Owners without the necessity of a vote of the members or compliance with Paragraph 7(e) above. If, after repair and reconstruction is completed, there is a surplus of funds, such funds shall be common funds of the Association to be used as directed by the Board.
- (b) **Plans and Specifications.** Any such reconstruction or repair shall be substantially in accordance with the plans and specifications under which the Property was originally constructed, except where changes are necessary to comply with current applicable building codes or where improvements not in accordance with the original plans and specifications are approved by the Board. To the extent insurance proceeds are available, the Association may reconstruct or repair Owner improvements damaged as a result of fire or other casualty.
- (c) **Encroachments.** Encroachments upon or in favor of Lots which may be created as a result of such reconstruction or repair shall not constitute a claim or basis for any proceeding or action by the Lot Owner upon whose property such encroachment exists, provided that such reconstruction was substantially in accordance with the architectural plans under which the Property was originally constructed. Such encroachments shall be allowed to continue in existence for so long as the reconstructed building shall stand.
- (d) **Construction Fund.** The net proceeds of the insurance collected on account of a casualty and the funds collected by the Association from assessments against Lot Owners on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair in the manner set forth in this Paragraph, to be disbursed by the Association in appropriate progress payments to such contractor(s), supplier(s), Owners and/or personnel performing the work or supplying materials or services for the repair and reconstruction of the buildings as are designated by the Board.

10. **ARCHITECTURAL CONTROLS.**

- (a) **Architectural Standards.** Except as otherwise provided herein, no Owner, Occupant, or any other person may, without first obtaining written approval of the Architectural Control Committee ("ACC"),:
- (i) make any encroachment onto the Common Property,
  - (ii) construct any dwelling or other improvement on a Lot,
  - (iii) make any exterior change, alteration or construction on a Lot (including painting, regrading or significant landscaping modifications), or any alteration of the Lot which affects the exterior appearance of the Lot, or
  - (iv) erect, place or post any object, sign, clothesline, playground equipment, light, storm door or window, artificial vegetation, exterior sculpture, fountains, flags or other thing on the exterior of the Lot, on the dwelling on the Lot, in any windows of the dwelling (other than appropriate window treatments permitted under Paragraph 11 hereof), or on any Common Property.

The standard for approval of such improvements shall include, but not be limited to: (1) aesthetic consideration, (2) materials to be used, (3) compliance with the Community-Wide Standard, this Declaration, or the design standards which may be adopted by the Board or ACC, (4) harmony with the external design of the existing buildings, Lots and structures, and the location in relation to surrounding structures and topography, and (5) any other matter deemed to be relevant or appropriate by the Board or ACC.

Applications for approval of any such architectural modification shall be in writing and shall provide such information as the ACC may reasonably require. Except as may otherwise be determined by the Board, the ACC or its designated representative shall be the sole arbiter of such application and may withhold approval for any reason, including purely aesthetic considerations. The Association, acting through the Board, shall be entitled to stop any construction which is not in conformance with approved plans. The Board or the ACC may publish written architectural standards for exterior and Common Property alterations or additions.

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

- (a) **Required Action by Board or ACC.** If the Board or ACC fails to approve or to disapprove such application within forty-five (45) days after the application and all information as the Board or ACC may reasonably require have been submitted, then the Owner submitting the application may issue written notice, by certified mail, to the Association president, informing of the Owner's intent to proceed with the modification as identified in the application, unless the Association issues a written disapproval of the application within ten (10) days of receipt of the Owner's notice. If the Board fails to issue such written disapproval within that ten (10) day period, then its approval will not be required and this subparagraph will be deemed complied with as to the items specifically identified in the application; provided, however, even if the requirements of this subparagraph are satisfied, nothing herein shall authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of the Declaration, Bylaws or Association rules, or of any applicable zoning or other laws.
- (b) **Architectural Control Committee.** The Architectural Control Committee shall constitute a standing committee of the Association. The ACC shall consist of the Board unless the Board delegates to other Persons the authority to serve on the ACC. The ACC shall have the authority to select and employ professional consultants to assist it in discharging its duties, the cost of such consultants to be paid by the Owner of any Lot for which plans and specifications have been submitted for approval. The Owner of any such Lot shall be responsible for paying the full costs of each review, whether or not submitted plans and specifications are approved by the ACC, and the ACC may require payment of all such costs prior to approval of plans and specifications. The ACC also may charge reasonable fees to cover the cost of review or inspections performed hereunder, and any such fees shall be published in the design standards.
- (c) **Appeal.** IF the ACC or its designated representative disapproves any application or part thereof, an Owner shall have the right to appeal the ACC's decision to the Board of Directors. The Board shall rule on the appeal within forty-five (45) days of receiving written notice requesting an appeal from the Owner. In ruling on the appeal, the Board shall consider all relevant materials presented to it by either the Owner or the ACC, the decision of the ACC, and the application of the Owner to the ACC. The Board of Directors shall have the final authority to approve, disapprove, or conditionally approve or disapprove the application of the Owner. If the Board does not receive written notice from the Owner by certified mail requesting an appeal within ten (10) days from the date of the ACC's notice to the Owner of its decision, the decision of the ACC shall become final and all rights of appeal shall terminate and thereafter be void.
- (d) **Condition of Approval.** As a condition of approval for a requested architectural change, modification, addition or alteration, an Owner, on behalf of himself or herself and his or her successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance to and on such change, modification, addition or alteration. In the discretion of the Board or the ACC, an Owner may be made to verify such condition of approval by written instrument in recordable form acknowledged by such Owner on behalf of himself or herself and all successors-in-interest.

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

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

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

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

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

(h) **Commencement and Completion of Construction.** All improvements approved by the ACC hereunder must be commenced within sixty (60) days from the date of approval. If not commenced within such time, then such approval shall be deemed revoked by the ACC, unless the ACC gives a written extension for commencing the work. Additionally, except with written ACC approval otherwise, and except for delays caused by strikes, fires, national emergencies, critical materials shortages or other intervening forces beyond the control of the Owner, all work approved by the ACC hereunder shall be completed within thirty (30) days of commencement.

## 11. **USE RESTRICTIONS.**

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

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

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

(a)

**Use of Lots.**

- (i) **Residential Use.** Each Lot shall be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Lot, except that the Owner or Occupant residing in a dwelling on a Lot may conduct such ancillary business activities within the dwelling so long as:
- (1) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside of the dwelling;
  - (2) the business activity does not involve visitation of the dwelling by employees, clients, customers, suppliers or other business invitees in greater volume than would normally be expected for guest visitation to a residential dwelling without business activity;
  - (3) the business activity conforms to all zoning requirements for the Property;
  - (4) the business activity does not increase traffic in the Property in excess of what would normally be expected for residential dwellings in the Property without business activity (other than by deliveries by couriers, express mail carriers, parcel delivery services and other such similar delivery services);
  - (5) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the Association's ability to obtain insurance coverage;
  - (6) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as determined in Board's discretion; and
  - (7) the business activity does not result in a materially greater use of common area facilities or Association services.

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

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

If an Owner of a Lot is a corporation, partnership, trust or other legal entity not being a natural person, the entity shall designate in writing to the Board the name(s) of the person(s) who will occupy the

dwelling on the Lot. The designated person(s) to occupy the dwelling may not be changed more frequently than once every six (6) months.

- (b) **Subdivision of Lots and Outbuildings.** No Lot may be subdivided into a smaller Lot and no structure of a temporary character, trailer, tent, shack, carport, garage, barn or other outbuilding shall be erected or used by any Owner or Occupant on any portion of the Property, at any time, either temporarily or permanently, except with written Board approval.
- (c) **Use of Common Property and Lot Easement Areas.** There shall be no obstruction of the Common Property or Lot Easement Areas, nor shall anything be kept, parked or stored on any part of the Common Property or Lot Easement Areas without prior written Board consent, except as specifically provided herein.

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

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

Noxious, destructive, offensive or unsanitary activity shall not be carried on upon the Property. No Owner or Occupant may use or allow the use of the Lot or any portion of the Property at any time, in any way, which may endanger the health or property of other Occupants, unreasonably annoy, disturb or cause embarrassment or discomfort to other Owners or Occupants, or, in the Board's discretion, constitute a nuisance. The intention of this provision is to grant the Association and aggrieved Owners and Occupants a right of redress for actions, activities or conduct which unreasonably disturbs or impairs the peaceful and safe enjoyment of the Property. In this regard, specific unauthorized and unreasonable annoyances or disturbances shall include, but not be limited to, the following:

- (i) Any screaming, shouting, fighting, raucous behavior or insobriety on the Common Property or a Lot, or within a dwelling on a Lot if such conduct can be heard in the normal course of activities in any other dwelling on any other Lot;
- (ii) The use of any alarm, equipment or device, mechanical or otherwise, which creates or produces excessively loud sounds or any vibrations, if such sounds can be heard or vibrations felt in the normal course of activities from within a dwelling on any other Lot;
- (iii) Any threatening or intimidating conduct towards any resident, guest or pet at the Property;
- (iv) Any conduct which, in the Board's reasonable discretion, creates any danger or risk of injury to others or damage to property at the Property, or which creates any threat to health or safety of any other resident or pet at the Property;
- (v) Any excessively loud play or playground activities outside of a Unit, or within a Unit if such conduct can be heard in the normal course of activities in any other Unit;

- (vi) Any conduct which creates any noxious odor, if such odor can be detected in the normal course of activities on any other Lot;
- (vii) Any similar action or activity on the Property which unreasonably interferes with the peaceful use and enjoyment of other Lots or the Common Property by any other Owner, members of his or her family, guests, invitees, or Occupants of his or her Lot;
- (viii) Any construction or similar activities on a Lot, between the hours of 9:00 p.m. and 7:30 a.m., which can be heard from within a dwelling on any other Lot;
- (ix) Any smoking on a Lot or within a dwelling on a Lot which results in second-hand smoke transferring or spreading into other dwellings on Lots; or
- (x) Any incessant or excessive pet noises, including dog barking, if such conduct can be heard in the normal course of activities in any other dwelling on a Lot.

However, nothing herein shall be construed to affect the rights of an aggrieved Owner or Occupant to proceed individually against a violator hereof for relief from interference with his or her property or personal rights, and the Board may, in its discretion, require aggrieved individuals to seek redress personally for interference with their personal property rights before the Association intervenes and commences enforcement action hereunder. No claim for any loss, damage or otherwise shall exist by an aggrieved Owner or Occupant against the Association for failure to enforce the provisions hereof if the aggrieved Owner or Occupant has not personally pursued all available remedies against the violator for redress provided under Georgia law.

No Lot Owner or Occupant may use or allow the use of the Lot or the Common Areas in any manner which creates noises between the hours of 11:00 p.m. and 7:30 a.m. which can be heard by persons in another Lot that will, in the Board's sole discretion, unreasonably interfere with the rights, comfort or convenience of any other Owner, members of his or her family, guests, invitees, or Occupants of his or her Lot.

No Owner, Occupant or agent of such Owner or Occupant shall do any work which, in the Board's reasonable opinion, would jeopardize the soundness or safety of the Property or any structure thereon, would reduce the value thereof, or would impair any easement or other interest in the Property, without prior written consent of all Association members and their Mortgagees.

No damage to or waste of the Common Areas, or any part thereof, shall be permitted by any Owner or any Occupant, guest or invitee of any Owner. Each Owner and Occupant shall indemnify and hold the Association and the other Owners harmless against all loss to the Association or other Owners resulting from any such damage or waste caused by such Owner or Occupant, or the Owner's or Occupant's guest or invitee.

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

(f) **Pets.** No Owner or Occupant may keep any pets other than generally recognized household pets on any portion of the Property, and no Owner or Occupant may keep more than two (2) generally recognized household pets per Lot (other than fish, hamsters, gerbils or similar generally recognized household pets weighing less than two (2) pounds each).

No Owner or Occupant may keep, breed or maintain any pet for any commercial purpose. Pets may not be left unattended outdoors. Dogs must be kept on a leash and be under the physical control of a responsible person at all times while outdoors in areas which are not fully enclosed by a physical fence. No structure for the care, housing, or confinement of any pet shall be constructed or maintained on any part of the

Property without prior written Board approval as provided in Paragraph 10 hereof. Feces left by pets upon the Common Property, on any Lot or in any dwelling, including the pet owner's Lot or dwelling, must be removed promptly by the owner of the pet or the person responsible for the pet.

No potbellied pigs may be brought onto or kept at the Property at any time. No pit bulldogs or other dogs determined in the sole discretion of the Board to be dangerous dogs may be brought onto or kept on the Property at any time by any Lot Owner, Occupant, or guest of an Owner or Occupant. Any pet which endangers the health of any Owner or Occupant of any Lot or which creates a nuisance or unreasonable disturbance, as may be determined in the Board's sole discretion, must be permanently removed from the Property upon seven (7) days' written notice by the Board. If the Owner or Occupant fails to comply with such notice, the Board may remove the pet and/or obtain a court order requiring the Owner or Occupant to do so. Any pet which, in the Board's sole discretion, presents an immediate danger to the health, safety or property of any member of the community may be removed by the Board without prior notice to the pet's owner.

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

**(g)** **Parking.** No Owner or Occupant may keep or bring onto the Property more than two (2) vehicles per Lot at any time without prior written Board approval, except for authorized service vehicles provided for below. No vehicles may be parked overnight on the Common Property, except in spaces designated as parking spaces by the Board or otherwise with written Board approval. Authorized vehicles are permitted to be parked only in the following locations on Lots:

- (i)** **Carports.** Authorized vehicles may be parked entirely within the carport serving the Lot;
- (ii)** **Paved Driveway Areas.** In paved driveway areas on Lots, designated parking spaces, or other areas authorized in writing by the Board.

Disabled vehicles are prohibited from being parked on the Property. For purposes of this subparagraph, a vehicle shall be considered "disabled" if it does not have a current license tag or is obviously inoperable.

Boats and other watercraft, motorcycles, motorized bicycles, motorized go-carts, tractors, trailers (with or without wheels), trucks with a load capacity of one (1) ton or more, full-size vans (excluding mini-vans or utility vehicles used as passenger vehicles), recreational vehicles (RV's and motor homes), vehicles used primarily for commercial purposes and containing visible evidence of commercial use (such as tool boxes or tool racks), and vehicles with commercial writings on their exteriors are also prohibited from being parked on the Property, except: (1) in spaces, if any, as may be designated by the Board as parking areas for such vehicles; (2) in the case of service vehicles, on a temporary basis in the carport, on paved driveway areas or in designated parking spaces, during daytime business hours or during emergencies for the purpose of, and while, servicing a Lot or the Common Property; and (3) in the case of boats and boat trailers, entirely within the carport serving the Lot, as long as such boat or boat trailer parking does not displace another vehicle to be parked elsewhere on the Property;.

Additionally, authorized passenger automobiles, mini-vans and sport utility vehicles, and trucks with a load capacity of less than one (1) ton may be parked on paved driveway areas on Lots for periods not to exceed two (2) hours in any day. Guest parking spaces are reserved for guest parking, and Owners and Occupants may not park vehicles in designated guest parking except with written Board approval.

If any vehicle is parked on any portion of the Property in violation of this subparagraph or in violation of the Association's rules and regulations, the Board may place a notice on the vehicle specifying the nature of the violation and stating that after twenty-four (24) hours the vehicle may be towed. The notice shall include the name and telephone number of a person to contact regarding the alleged violation. A notice also shall be

conspicuously placed at the Property stating the name and telephone number of the person or entity which will do the towing and/or booting hereunder. If twenty-four (24) hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six (6) months of such notice, the vehicle may be towed or booted in accordance with the notice, without further notice to the vehicle owner or user.

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

**(h) Use of Carports.** No Owner or Occupant shall park his or her car or other motor vehicle on any portion of the Property, other than in the carport, unless the maximum number of cars or similarly sized motor vehicles which can be parked in the carport according to its design capacity are already parked in said carport. All carports shall be maintained in such a manner that parking for the maximum number of motor vehicles for which it was originally designed to hold is allowed and possible. The following items are prohibited from being located in carports: unlocked storage of hazardous materials; trash/refuse not stored in proper containers ready for removal; wind chimes; open shelving; appliances; furniture not specifically designed for outdoor use, and other unsightly or hazardous materials stored in carport area or hung from carport ceiling or walls, except with prior written approval of the Board of Directors.

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

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

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

**(j) Heating of Dwellings in Colder Months.** In order to prevent breakage of water pipes during colder months of the year resulting in damage to the Property, increased Common Expenses, and increased insurance premiums or cancellation of insurance policies due to numerous damage claims, the thermostats within the dwelling on Lots shall be maintained with the heat in an "on" position and at a minimum temperature setting of sixty (60°) degrees Fahrenheit (except during power failures or periods when heating equipment is broken) whenever the temperature is forecasted to or does reach thirty-two (32°) degrees Fahrenheit or below. Owners and Occupants of Lots shall take all steps possible on a timely basis to keep heating equipment, including, but not limited to, the thermostat, in good working order and repair. At any time during the months specified above when the heating equipment is not working properly, the Lot Owner or Occupant shall immediately inform the Association of this failure of the equipment and of the time needed to repair the equipment. The Board may fine any Owner or Occupant up to five hundred (\$500.00) dollars or may cause the water service to

the violator's Lot to be discontinued for violation of this subparagraph, in addition to any other remedies of the Association.

- (k) **Signs.** Except as may be required by legal proceedings, no signs, advertising posters or billboards of any kind shall be erected, placed, or permitted to remain on the Property without the prior written consent of the Board or its designee, except that two (2) professional security signs not to exceed four (4") inches by four (4") inches each in size may be displayed from within a dwelling on a Lot. The Board shall have the right to erect reasonable and appropriate signs on behalf of the Association. The Board also shall have the authority to adopt regulations permitting temporary signs on Lots announcing open houses, births, birthdays or other events for limited periods of time.
- (l) **Rubbish, Trash, and Garbage.** All rubbish, trash, and garbage shall be regularly removed from the Lot and shall not be allowed to accumulate therein. No garbage or trash shall be placed on the Common Property, temporarily or otherwise, except as provided herein. Rubbish, trash, and garbage shall be disposed of in appropriate sealed bags and placed in proper receptacles for collection. The Board may establish regulations regarding placement of trash cans for pick-up.
- (m) **Impairment of Dwellings and Easements.** An Owner shall do no act nor any work that will impair the structural soundness or integrity of another dwelling or impair any easement or hereditaments, nor do any act nor allow any condition to exist which will adversely affect the other Lots or their Owners or Occupants.
- (n) **Unsightly or Unkempt Conditions.** The pursuit of hobbies or other activities, including, but not limited to the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Property, except within a dwelling. Clothing, bedding, rugs, mops, appliances, indoor furniture, and other household items shall not be placed or stored outside the dwelling. Only appropriate outdoor items, such as neatly stacked firewood, patio furniture, grills, and bicycles may be kept on the patio or deck serving the Lot.
- (o) **Garage Sales.** No garage sale, carport sale, yard sale, flea market, or similar activity shall be conducted in any portion of the Property without prior written Board consent. If so permitted, any such activities shall be subject to all reasonable conditions that the Board may impose.
- (p) **Window Treatments.** Unless otherwise approved in writing by the Board, all windows on a dwelling which are intended to be operable shall have window treatments, and any portion thereof visible from outside the dwelling shall be white or off-white in color.
- (q) **Antennas and Satellite Dishes.** No transmission antenna, of any kind, may be erected anywhere on the Property without written approval of the Board of Directors or the Architectural Control Committee. No direct broadcast satellite (DBS) antenna or multi-channel multi-point distribution service (MMDS) larger than one meter in diameter shall be placed, allowed, or maintained upon any portion of the Property, including a Lot. DBS and MMDS antennas one meter or less in diameter and television broadcast service antennas may only be installed in accordance with Federal Communication Commission (FCC) rules and the rules and regulations of the Association authorized by the FCC, both as may be amended from time to time. Such items shall be installed in the least conspicuous location available on the Lot which permits reception of an acceptable signal. Except as provided in this subparagraph, no antenna or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained outdoors on any portion of the Property, whether attached to a home or structure or otherwise; provided, however, that the Association shall have the right to erect, construct and maintain such devices.

## 12. **LEASING.**

In order to protect the equity of the individual Lot Owners at Woodehaven at Chattahoochee Crossing, and to carry out the purpose for which the Property was formed by preserving the character of the Property as a homogenous residential community of predominantly owner-occupied homes, leasing of Lots shall be

governed by the restrictions imposed by this Paragraph. **Except as provided herein, leasing of Lots is prohibited.**

**(a) Definitions.**

**(i)** “Effective Date” means the date this Amendment is recorded in the Gwinnett County, Georgia land records.

**(ii)** “Grandfathered Owner” means an Owner of a Lot who is lawfully leasing his or her Lot on Effective Date. Grandfathering shall apply only to the Lot owned by such Grandfathered Owner on the Effective Date. Grandfathering hereunder shall continue only until the earlier of: (1) any occupancy of the Lot by the Grandfathered Owner after the Effective Date, or (2) the date the Grandfathered Owner conveys title to the Grandfathered Lot to any other person (other than the Owner’s spouse). Upon either event, the Lot shall automatically lose grandfathering hereunder.

**(iii)** “Grandfathered Lot” means the Lot owned by a Grandfathered Owner on the Effective Date hereof.

**(iv)** “Leasing” means the regular, exclusive occupancy of a Lot by any person(s) other than: (1) the Owner or a parent, child or spouse of an Owner, or (2) a person who occupies the Lot with the Owner or parent, child or spouse of the Owner, who is also occupying the Lot as his or her primary residence.

**(b) Leasing Permit and Restriction. No Owner of a Lot may lease his or her Lot, except: (1) a Grandfathered Owner, (2) a non-Grandfathered Owner who has received a written leasing permit from the Board of Directors, or (3) a non-Grandfathered Owner who has received a hardship leasing permit from the Board.**

Non-Grandfathered Owners who want to lease their Lots may do so only if they have applied for and received from the Board either a “leasing permit” or a “hardship leasing permit.” All leasing permits and hardship leasing permits shall be valid only as to a specific Owner and Lot and shall not be transferable between either Lots or Owners (including a subsequent Owner of a Lot where a permit was issued to the Owner’s predecessor in title).

An Owner’s request for a leasing permit shall be approved only if the number of current, outstanding permits issued plus Grandfathered Lots is less than fifty two (52).

Leasing permits and hardship leasing permits are automatically revoked upon the happening of any of the following events: (1) the sale or transfer of the Lot to a third party (other than to an Owner’s spouse); or (2) the failure of an Owner to lease his or her Lot for one hundred twenty (120) consecutive days at any time after the issuance of a leasing permit.

If the number of current leasing permits issued plus Grandfathered Units totals fifty two (52) or more, then no additional leasing permits shall be issued (except for hardship leasing permits) until that number falls below fifty two (52). Owners who have been denied a leasing permit shall automatically be placed on a waiting list for a leasing permit and shall be issued a permit, if they so desire, when such number falls below fifty two (52). The issuance of a hardship leasing permit to an Owner shall not cause the Owner to be removed from the waiting list for a leasing permit.

**(c) Hardship Leasing Permits. If not leasing a Lot will result in an undue hardship to the Owner, then the Owner may seek to lease on a hardship basis by applying to the Board of Directors for a hardship leasing permit. The Board shall have the authority to issue or deny requests for hardship leasing permits in its discretion after considering the following factors: (1) the nature, degree, and likely duration of the hardship; (2) the harm, if any, which will result to the Properties if the permit is approved; (3) the number of hardship leasing permits which have been issued to other Owners; (4) the Owner's ability to cure the hardship; (5) whether the Owner caused the hardship; and (6) whether previous hardship leasing permits have been issued to the Owner.**

A “hardship” hereunder shall include, but not be limited to, the following situations:

- (i) an Owner must relocate his or her residence outside the greater Atlanta metropolitan area and cannot, within six (6) months from the date that the Lot was placed on the market, sell the Lot except at a price below the current appraised market value, after having made reasonable efforts to do so;
- (ii) an Owner dies and the Lot is being administered by his or her estate; or
- (iii) an Owner takes a leave of absence or temporarily relocates out of the metropolitan-Atlanta area and intends to return to reside in the Lot within one (1) year.

Hardship leasing permits shall be valid for a term not to exceed one (1) year. Owners may apply for additional hardship leasing permits at the expiration of a hardship leasing permit, if the circumstances warrant. Hardship leasing permits shall be automatically revoked if, during the term of the permit, the Owner is approved for and receives a leasing permit.

(d) **Leasing Provisions.** When leasing is permitted under this Paragraph, it shall be governed by the following provisions:

(i) **Notice.** At least seven (7) days before entering into a lease, the Owner shall provide the Board with a copy of the proposed lease agreement. The Board shall approve or disapprove the form of said lease. If a lease is disapproved, the Board shall notify the Owner of the action to be taken to bring the lease in compliance with the Declaration and any rules and regulations adopted pursuant thereto.

(ii) **General.** Lots may be leased only in their entirety; no rooms or fractions of Lots may be leased without prior written Board approval. All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. There shall be no subleasing of Lots or assignment of leases without prior written Board approval. All leases must be for an initial term of not less than one (1) year, except with written Board approval, which shall not be unreasonably withheld in cases of undue hardship. Within ten (10) days after executing a lease agreement for the lease of a Lot, the Owner shall provide the Board with a copy of the lease and the name of the lessee and all other people occupying the Lot. The Owner must provide the lessee copies of the Declaration, Bylaws, and the rules and regulations. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed lessee; the Board's approval or disapproval shall be limited to the form of the proposed lease.

(iii) **Liability for Assessments; Compliance.** Each Owner covenants and agrees that any lease of a Lot shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant, and the lessee, by occupancy of the Lot, agrees to the applicability of this covenant and incorporation of the following language into the lease:

- (1) **Compliance with Declaration, Bylaws, and Rules and Regulations.** If a Lot is lease or occupied in violation of this Paragraph, then the Association’s Board of Directors shall be authorized, in addition to all other available remedies, to terminate that lease and occupancy, to suspend all voting and/or Common Area use privileges of the Owner and any unauthorized tenant(s) or occupant(s), and/or to suspend all common services to the Lot paid for by the Association as a common expense, including water service to the Lot, subject to the provisions of this Declaration and the Bylaws.

The lessee shall comply with all provisions of the Declaration, Bylaws and Association rules and shall control the conduct of all other occupants and guests of the leased Lot in order to ensure such compliance. The Owner shall cause all occupants of his or her Lot to comply with the Declaration, Bylaws and Association rules, and shall be responsible for all violations by such occupants, notwithstanding the fact that such occupants are fully liable and may be sanctioned for any such violation.

If the lessee, or a person living with the lessee, violates the Declaration, Bylaws, or a rule or regulation, fines may be levied hereunder against the lessee and/or the Owner, and such violation is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with Georgia law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof. Alternatively, the Association may require the Owner to evict the violating tenant. If the Association proceeds to evict the lessee, any costs, including reasonable attorney's fees actually incurred and court costs associated with the eviction shall be an assessment and lien against the Lot.

- (2) Liability for Assessments. When an Owner who is leasing his or her Lot fails to pay any annual or special assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board, lessee shall pay to the Association all unpaid annual and special assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by lessee. However, lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If lessee fails to comply with the Board's request to pay assessments or other charges, lessee shall pay to the Association all amounts authorized under the Declaration as if lessee were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

**(e)11 Applicability of this Paragraph**. Notwithstanding the above, this Paragraph shall not apply to any leasing transaction entered into by the Association, or by any first Mortgagee who becomes the Owner of a Lot through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage. Such parties shall be permitted to lease a Lot without first obtaining a permit in accordance with this Paragraph.

13. **SALE OF LOTS.**

A Lot Owner intending to make a transfer or sale of a Lot or any interest in a Lot shall give the Board written notice of such intention within seven (7) days after execution of the transfer or sales documents. The Owner shall furnish the Board, as part of the notice, the name and address of the intended grantee and such other information as the Board may reasonably require. This Paragraph shall not be construed to create a right of first refusal in the Association or in any third party.

Within seven (7) days after receiving title to a Lot, the purchaser of the Lot shall give the Board written notice of his or her ownership of the Lot. Upon failure of a Owner to give the required notice within the seven-day time period provided herein, the Board may levy fines against the Lot and Owner thereof, and assess the Owner for all costs incurred by the Association in determining his or her identity.

14. **MAINTENANCE RESPONSIBILITY.**

- (a) Association's Responsibility**. According to a reasonable prioritization and/or schedule established by the Board, the Association shall maintain, keep in good repair, and, in the Board's discretion improve or alter the Area of Common Responsibility, which shall include the following:

- (i) Common Property**. The Association shall maintain, keep in good repair and, in the Board's discretion, improve or alter the Common Property. This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping grass areas, paving, walkways, buildings and other improvements situated on the Common Property. The Association shall also maintain and keep in good repair all water and sewer pipes or facilities which

serve the Common Property, to the extent that such pipes and facilities are not maintained by public, private, or municipal utility companies.

(ii) **Lots.** The Association shall also maintain, keep in good repair, replace as necessary, and, in the Board's discretion, improve or alter the following portions of the Lots (which shall be included within the Area of Common Responsibility):

(1) **Townhomes.** The Association shall maintain and keep in good repair all roofs and roof systems on the townhomes, limited to the roof shingles, felt paper or underlayment, decking and flashing. The Association also shall maintain and keep in good repair all visible exterior building surfaces, including painting of any painted surfaces thereof, but not including any of the following items, which are required to be maintained by the Owner: (1) doors, door frames, door thresholds, and door hardware, (2) windows, window frames, glass, window hardware, and window screens, (3) window boxes and hardware, (4) light fixtures and lights serving or controlled from within the townhome on the Lot, (4) screened or glassed enclosures, (5) awnings, (6) air conditioning components, or (7) electrical or plumbing fixtures or components constituting part of, or serving only, the Lot.

(2) **Landscaping.** Except as provided below, the Association shall maintain and care for all lawns, trees, shrubs, hedges, grass and other landscaping contained on the Lot and within any Lot Easement Areas, to maintain such landscaping in a neat and attractive condition. However, the Association shall not have the responsibility to improve any landscaping or care for any flowers, plants, shrubs or other vegetation: (1) located in any window boxes, (2) located on or within any patio, porch or deck; (3) located within any enclosed area on the Lot, or (4) installed by an Owner. The maintenance of these items shall be the sole responsibility of the Owner of the townhouse served by such window box, patio, porch, deck or enclosed area, or whose Owner installed such landscaping.

(3) **Lot Easement Areas.** Except as may be herein otherwise specifically provided, the Association shall maintain and keep in good order and repair all portions of the Lot Easement Areas together with improvements situated within such Lot Easement Areas designed for the use and enjoyment of all the Owners or Occupants of Lots in a Subdivision Block. The Association's responsibilities with respect to the Lot Easement Areas shall be deemed to include the maintenance, repair, and replacement of all walks and pathways, parking areas, gazebos, underground irrigation systems, and/or other structures located within the Lot Easement Areas serving the Lot Easement Areas. .

(iii) **General Maintenance Provisions.** Upon Board resolution and approval of a Majority of the members present or represented by proxy at a duly constituted meeting of the members, the Association may assume responsibility for providing additional exterior maintenance upon Lot improvements. Additionally, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association where the Board has determined that such maintenance would benefit all Owners. All maintenance performed by the Association shall be performed consistent with the Community-Wide Standard.

The Association shall not be liable for injury or damage to person or property caused by the elements or by the Owner of any Lot, or any other person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Common Property or from any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder, unless such injury or damage results directly and solely from the negligence or gross negligence of the Association. The Association is not responsible for waterproofing of townhomes on Lots. It is understood that, even if damage within a townhome is caused by an exterior condition for which the Association is responsible hereunder, the Owner shall be responsible for repairs within his or her townhome (including drywall, carpet and other repairs), unless such damage was caused solely by or resulted solely from the negligence or gross negligence of the Association, or such damage is covered under insurance maintained by the Association hereunder (solely to the extent of proceeds actually paid under such insurance).

The Association shall not be liable to the Owner of any Lot or such Owner's Occupant, guest, or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the

Common Property. The Association shall not be liable to any Owner, or any Owner's Occupant, guest or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Paragraph where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

The Association shall repair incidental damage to any Lot resulting from performance of work which is the responsibility of the Association. In performing its responsibilities hereunder, the Association shall have the authority to delegate to such persons, firms or corporations of its choice, such duties as are approved by the Board.

- (b) Owner's Responsibility.** Except as specifically provided in subparagraph (a) above, all maintenance, repair, replacement and improvement of the Lot and Lot Easement Area shall be the responsibility of the Owner thereof. In addition, the Owner shall maintain all pipes, lines, ducts, conduits, or other apparatus which are deemed to be part of the Lot hereunder (including all gas, electricity, water, sewer and air conditioning pipes, lines, ducts, conduits and other apparatus serving only the Lot). The Owner also shall be responsible for the maintenance, repair and replacement of all of the following portions of the Lot: (1) doors, door frames, door thresholds, and door hardware; (2) windows, window frames, glass, window hardware, and window screens; (3) window boxes and hardware; (4) light fixtures and lights (exterior and interior) serving or controlled from within the townhome on the Lot; (5) screened or glassed enclosures of porches, balconies or decks; (6) awnings; (7) driveways on the Lot; (8) the heating and/or air conditioning system serving the Lot, including the compressor and any pipes, lines, ducts, vents, or wires thereof; (9) electrical or plumbing fixtures, components, lines or vents constituting part of, or serving only, the Lot; and (10) any flowers, plants, shrubs or other vegetation: (i) located in any window boxes, (ii) located on or within any patio, porch or deck; (iii) located within any enclosed area on the Lot, or (iv) installed by an Owner.

All maintenance to be performed by the Owner hereunder shall be performed consistent with this Declaration and the Community-Wide Standard established by the Board. Any maintenance which involves an exterior alteration shall require prior approval of the Board or its designee pursuant to Paragraph 10 of this Declaration.

Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to the Common Property by an Owner or Occupant which is the responsibility of the Association hereunder (including, but not limited to landscaping of Common Property) shall be performed at the sole expense of such Owner or Occupant, and the Owner or Occupant shall not be entitled to reimbursement from the Association even if the Association accepts the maintenance or repair.

Each Owner shall also be obligated:

- (i)** To perform his or her responsibility in such manner so as not to unreasonably disturb other persons in other Lots.
- (ii)** To promptly report to the Association or its agent any defect or need for repairs, for which the Association is responsible.
- (iii)** Not to make any alterations in the portions of the Lot which are to be maintained by the Association or to remove any portion thereof or to make any additions thereto or do anything with respect to the exterior or interior of the Lot which would or might jeopardize or impair the safety or soundness of any Lot without first obtaining the written consent of the Board of Directors of the Association and all Lot Owners and Mortgagees of the Lots affected, nor shall any Lot Owner impair any easement without first

obtaining written consent of the Association and of the Lot Owner or Owners and their Mortgagees for whose benefit such easement exists.

- (iv) To pay for the cost of repairing, replacing or cleaning up any item which is the responsibility of the Lot Owner but which responsibility such Owner fails or refuses to discharge (which the Association shall have the right, but not the obligation, to do), or to pay for the cost of repairing, replacing, or cleaning up any item which, although the responsibility of the Association, is necessitated by reason of the willful or negligent act of the Lot Owner, his or her family, tenants or guests, with the cost thereof to be added to and become part of the Lot Owner's next chargeable assessment.

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

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

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

- (d) **Measures Related to Insurance Coverage.**

- (i) The Board, upon resolution, shall have the authority to require all or any Lot Owner(s) to do any act or perform any work involving portions of the Property which are the maintenance responsibility of the Lot Owner, which will, in the Board's sole discretion, decrease the possibility of fire or other damage in the Property, reduce the insurance premium paid by the Association for any insurance coverage or otherwise assist the Board in procuring or maintaining such insurance coverage. This authority shall include, but need not be limited to, requiring all Owners to turn off cut-off valves, which may now or hereafter be installed, during winter months for outside water spigots; requiring Owners to insulate pipes sufficiently or take other preventive measures to prevent freezing of water pipes; requiring Owners to install smoke detectors; requiring Owners to make improvements to the Owner's Lot; and such other measures as the Board may reasonably require so long as the cost of such work does not exceed five hundred (\$500.00) dollars per Lot in any twelve (12) month period.
- (ii) In addition to, and not in limitation of, any other rights the Association may have, if any Lot Owner does not comply with any reasonable requirement made by the Board pursuant to subparagraph (d)(i) above, the Association, upon fifteen (15) days' written notice (during which period the Lot Owner may perform the required act or work without further liability), may perform such required act or work at the Lot Owner's sole cost. Such cost shall be an assessment and a lien against the Lot and shall be collected in the manner provided for collection of assessments in Paragraph 7 of this Declaration. The Association

shall have all rights necessary to implement the requirements mandated by the Board pursuant to subparagraph (d)(i) of this Paragraph, including, but not limited to, a right of entry during reasonable hours and after reasonable notice to the Owner or Occupant of the Lot, except that access may be had at any time without notice in an emergency situation.

(e) **2 Measures Related to Provision of Common Water Service.**

(iii) The Association shall have an easement to enter a Lot to inspect for leaking toilets or faucets or other events which may be causing waste of water provided as a Common Expense. If the inspection reveals that the Lot Owner has failed to maintain the Lot so as to prevent waste of water provided for as a Common Expense, the Board shall follow the procedure outlined in subparagraph (c) of this Paragraph 14.

(iv) The Board, upon resolution, shall have the authority to require all or any Lot Owner(s) to do any act or perform any work involving portions of the Property which are the Owner's maintenance responsibility, which will, in the Board's sole discretion, conserve water so long as the cost of such work does not exceed five hundred dollars (\$500.00) per Lot in any twelve (12) month period.

(f) **Maintenance Standards and Interpretation.** The maintenance standards and the enforcement thereof and the interpretation of maintenance obligations under this Declaration may vary from one term of the Board to another term of the Board. These variances shall not constitute a waiver by the Board of the right to adopt and enforce maintenance standards under this Paragraph. No decision or interpretation by the Board shall constitute a binding precedent with respect to subsequent decisions or interpretations of the Board.

15. **PARTY WALLS AND FENCES.**

(a) **General Rules of Law to Apply.** Each wall or fence built as a part of the original construction of the dwellings or Lots which shall serve and separate any two (2) adjoining Lots or dwellings shall constitute a party wall or fence and, to the extent not inconsistent with the provisions of this Paragraph, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto.

(a) **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall or fence shall be shared by the Owners who make use of the wall or fence in equal proportions.

(b) **Damage and Destruction.** If a party wall or fence is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has benefited by the wall or fence may restore it, and the other Owner or Owners thereafter who are benefited by the wall or fence shall contribute to the cost of restoration thereof in equal proportions, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(c) **Right to Contribution Runs With Land.** The right of any Owner to contribution from any other Owner under this Paragraph shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

(d) **Arbitration.** In the event of any dispute arising concerning a party wall or fence, or under the provisions of this Paragraph, each party shall appoint one (1) arbitrator. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor by the Board, the Board shall appoint an arbitrator for the refusing party. The arbitrators thus appointed shall appoint one (1) additional arbitrator and the decision by a majority of all three (3) arbitrators shall be binding upon the parties. Compliance with this subparagraph shall be a condition precedent to any right of legal action that either party may have against the other in a dispute arising under the provisions of this Paragraph.

16. **MORTGAGEE'S RIGHTS.**

- (a) **Approval of Actions.** Unless at least two-thirds (2/3) of the first Mortgagees or Lot Owners give their consent, the Association shall not:
- (i) by act or omission seek to abandon or terminate the Property or the Association;
  - (ii) change the pro rata interest or obligations of any individual Lot for the purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards;
  - (iii) partition or subdivide any Lot;
  - (iv) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Property (the granting of utility easements or rights-of-way for public purposes and the granting other easements for the benefit of the Association shall not be deemed a transfer within the meaning of this clause); or
  - (v) use hazard insurance proceeds for losses to any portion of the Property (whether to Lots or to Common Property) for other than the repair, replacement, or reconstruction of such portion of the Property, except as provided in Paragraph 8(h) hereof.

The provisions of this subparagraph shall not be construed to reduce the percentage vote that must be obtained from Mortgagees or Lot Owners where a larger percentage vote is otherwise required by the Association Legal Instruments for any of the actions contained in this Paragraph.

- (a) **Liability for Assessments.** Where the Mortgagee holding a first Mortgage of record or other purchaser of a Lot obtains title pursuant to judicial or nonjudicial foreclosure of the Mortgage, it shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Lot which became due prior to such acquisition of title. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from Owners of all the Lots, including such acquirer, its successors and assigns. Additionally, such acquirer shall be responsible for all charges accruing subsequent to the passage of title, including, but not limited to, all charges for the month in which title is passed.
- (b) **Right to Information.** Upon written request to the Association, identifying the name and address of the holder and the Lot number or address, any Eligible Mortgage Holder will be entitled to timely written notice of:
- (i) any condemnation loss or any casualty loss which affects a material portion of the Property or any Lot on which there is a first Mortgage held by such Eligible Mortgage Holder;
  - (ii) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to a first Mortgage held by such Eligible Mortgage Holder which remains unsatisfied for a period of sixty (60) days, and any default in the performance by an individual Lot Owner of any other obligation under the Association Legal Instruments which is not cured within sixty (60) days;
  - (iii) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or
  - (iv) any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders, as specified herein.
- (c) **Right to Financial Statement.** Any holder of a first Mortgage shall be entitled, upon written request, to receive within a reasonable time after request, a copy of the financial statement of the Association for the immediately preceding fiscal year, free of charge to the Mortgagee so requesting.

- (d) **Leasing and Sales.** Notwithstanding anything to the contrary herein contained, the provisions of Paragraphs 12 and 13 governing sales and leases shall not apply to impair the right of any first Mortgagee to: (i) foreclose or take title to a Lot pursuant to remedies contained in its Mortgage; (ii) take a deed or assignment in lieu of foreclosure; or (iii) sell, lease, or otherwise dispose of a Lot acquired by the Mortgagee.

17. **GENERAL PROVISIONS.**

- (a) **Security.** The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve safety on the Property; however, each Owner, for himself or herself and his or her tenants, guests, licensees, and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security on the Property. It shall be the responsibility of each Owner to protect his or her person and property and all responsibility to provide security shall lie solely with each Lot Owner.

The Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

- (a) **Dispute Resolution.** Any Lot Owner or Occupant must give written notice to the Board requesting a hearing with the Board and attend such hearing to discuss amicable resolution of any dispute before that Owner or Occupant files any lawsuit against the Association, the Board, any officer or director, or the property manager of the Association. The Owner or Occupant shall, in such notice and at the hearing, make a good faith effort to explain the grievance to the Board and resolve the dispute in an amicable fashion, and shall give the Board a reasonable opportunity to address the Owner's or Occupant's grievance before filing suit. Upon receiving a request for a hearing, the Board shall give notice of the date, time and place of the hearing to the person requesting the hearing. The Board shall schedule this hearing for a date not less than seven (7) nor more than twenty-one (21) days from the date of receipt of the notice of hearing from the person requesting the hearing.
- (b) **No Discrimination.** No action shall be taken by the Association or the Board of Directors which would unlawfully discriminate against any person on the basis of race, creed, color, national origin, religion, sex, familial status or handicap.
- (c) **Implied Rights.** The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.
- (d) **Electronic Records, Notices and Signatures.** Notwithstanding any other portion of this Declaration, records, signatures and notices shall not be denied validity or effectiveness hereunder solely on the grounds that they are transmitted, stored, made or presented electronically. The relevant provisions of the Bylaws shall govern the giving of all notices required by this Declaration.

18. **EMINENT DOMAIN.**

Whenever all or any part of the Common Property shall be taken or conveyed in lieu of or under threat of condemnation by any authority having power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. If the taking involves a portion of the Common Property on which improvements have been constructed, then, unless within sixty (60) days after such taking at least seventy-five (75%) percent of the Owners shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Property to the extent lands are available therefor. The provisions of Paragraph 9, above, applicable to Common Property improvements damage, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

19. **EASEMENTS.**

(a) **Easements for Encroachment and Overhang.** There shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and such portion or portions of the Common Property adjacent thereto or as between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than five (5) feet, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Property or as between adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, Occupant, or the Association.

(b) **Easements for Use and Enjoyment of Common Property.** Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to his or her Lot, subject to the following provisions:

- (i) the right of the Association to charge reasonable admission and other fees for the use of any portion of the Common Property, to limit the number of guests of Lot Owners and tenants who may use the Common Property, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, his or her family, tenants, guests, and invitees;
- (ii) the right of the Association to suspend the voting rights of an Owner and the right of an Owner to use the recreational facilities in the Property for any period during which any assessment against his or her Lot which is provided for herein remains unpaid and for a reasonable period of time for an infraction of the Declaration, Bylaws, or rules and regulations;
- (iii) the right of the Association to borrow money as may be set forth in the Bylaws; provided, however, the lien and encumbrance of any such mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, encumbering any Lot or other property located within the Property (Any provision in this Declaration or in any such Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, encumbering any Lot or other property located within the Property.);
- (iv) the right of the Association to grant permits, licenses or easements across the Common Property, as authorized in this Declaration or the Bylaws; and
- (v) the right of the Association to dedicate or transfer all or any portion of the Common Property subject to such conditions as may be agreed to by the members of the Association.

Any Lot Owner may delegate his or her right of use and enjoyment in and to the Common Property and facilities located thereon to the members of his or her family, his or her tenants and guests, and shall be deemed to have made a delegation of all such rights to the Occupants of his or her Lot, if leased.

(c) **Easement of Use and Enjoyment to Lot Easement Areas.** Every Owner of a Lot on a Subdivision Block shall have a non-exclusive right and easement of use and enjoyment in and to the Lot Easement Areas within that Subdivision Block, including, without limitation, the right of pedestrian access, ingress and egress over those portions of the Lot Easement Areas, from time to time, designated for such purposes, together with the right to use gazebos, garden benches, and other structures placed on the Lot Easement Areas for the use and enjoyment of Owners, together with the right to utilize the lawns and grassed areas, notwithstanding the fact that the Lot Easement Areas are wholly within the boundary lines of Lots. The easement of use and

enjoyment in and to Lot Easement Areas shall pass with the title to every Lot subject to the following provision:

(i) The rights and privileges granted herein shall inure to the benefit of the Owners, their respective families, tenants, guests, and invitees.

(ii) The right of the Association to provide for certain reasonable Rules and Regulations regarding the use of the Lot Easement Areas, which Rules and Regulations, however, shall take into consideration the rights of Owners of Lots within a Block to the full and free use of the Lot Easement Areas including the sidewalks, pathways, gazebos, lawns, and grassed areas and the Association's duties to maintain and care for the Lot Easement Areas, all as more particularly set forth herein.

(iii) The right of the Association to grant easements in, under, and through the Lot Easement Areas to any governmental or public agency, authority, or utility or private utility for such purposes as benefit the development and Lots therein and as more particularly defined in subparagraph (d) below.

(iv) The right of the Association to borrow money for the purpose of improving, maintaining, and repairing the Lot Easement Areas or any portion thereof and repairing and maintaining any facilities or structures such as gazebos, walkways, irrigation systems, or similar improvements located thereon (which structures and improvements shall be property of the Association if purchased by the Association) and to give as security for the payment of any such loan, a mortgage conveying all or any portion of the Common Areas; provided, however, that the lien and encumbrance of any such mortgage given by the Association shall be subject and subordinate to any and all rights, interest, options, easements, and privileges herein reserved or established for the benefit of any Owner, or the holder of any mortgage on a Lot given by any Owner, irrespective of when executed.

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

(b) **Easement for Entry.** The Association shall have an easement to enter onto any Lot for emergency, security, safety, and for other purposes reasonably necessary for the proper maintenance and operation of the Property, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all police officers, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be only during reasonable hours and after notice to the Owner or Occupant. This right of entry shall include the right of the Association to enter a Lot to cure any condition which may increase the possibility of a fire or other hazard in the event that an Owner fails or refuses to cure the condition upon request by the Board.

## 20. **AMENDMENTS.**

Except where a higher vote is required for action under any other provisions of this Declaration, in which case such higher vote shall be necessary to amend such provision, this Declaration may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the members of the Association holding sixty-six and two-thirds (66-2/3%) percent of the total eligible vote thereof, unless the Act permits amendment by a lesser percentage, in which case this Declaration may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent

of the members of the Association holding a Majority of the total eligible vote thereof. Notice of a meeting, if any, at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. No amendment shall be effective until certified by the President and Secretary of the Association and filed in the Gwinnett County, Georgia land records.

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

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

If legal action is not instituted to challenge the validity of this Declaration or any amendment hereto within one (1) year of the recording thereof in the Gwinnett County, Georgia land records, then such amendment or document shall be presumed to be validly adopted.

21. **SEVERABILITY.**

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

22. **DURATION.**

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

23. **PREPARER.**

This Declaration was prepared by Jay S. Lazega, Weissman, Nowack, Curry & Wilco, P.C., One Alliance Center, 4th Floor, 3500 Lenox Road, Atlanta, Georgia 30326.

IN WITNESS WHEREOF, the undersigned officers of Woodehaven at Chattahoochee Crossing Property Owner's Association, Inc., hereby certify that the above amendment to the Original Declaration and the following amendment to the Original By-Laws were duly adopted by the required majority of the Association and its membership, with any required notices duly given.

This \_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

**WOODEHAVEN AT CHATTAHOOCHEE  
CROSSING PROPERTY OWNER'S  
ASSOCIATION, INC.**

Sworn to and subscribed to before  
me this \_\_\_\_ day of \_\_\_\_\_,  
200\_\_\_\_.

By: \_\_\_\_\_(Seal)  
President

\_\_\_\_\_  
Witness

Attest: \_\_\_\_\_(Seal)  
Secretary

\_\_\_\_\_  
Notary Public

[CORPORATE SEAL]

[Notary Seal]

JSL:Woodehaven at Chatt -Docs- Decl & By-Laws- Final Prep - C.doc(4014)

**BYLAWS**  
**OF**  
**WOODEHAVEN AT CHATTAHOOCHEE CROSSING**  
**PROPERTY OWNER'S ASSOCIATION, INC.**

**Article I.**

**General**

**Section 1. Applicability.** These Bylaws provide for the self-government of Woodehaven at Chattahoochee Crossing Property Owner's Association, Inc., in accordance with the Georgia Property Owners' Association Act ("Act"), the Articles of Incorporation filed with the Secretary of State of Georgia, and the Declaration of Covenants, Conditions and Restrictions for Woodehaven at Chattahoochee Crossing, recorded in the Gwinnett County, Georgia land records ("Declaration").

**Section 2. Name.** The name of the corporation is Woodehaven at Chattahoochee Crossing Property Owner's Association, Inc., ("Association").

**Section 3. Definitions.** The terms used herein shall have their generally accepted meanings or such meanings as are specified in Paragraph 2 of the Declaration.

**Section 4. Membership.** An Owner of a Lot shall automatically become a member of the Association upon taking title to the Lot and shall remain a member for the entire period of ownership. As may be more fully provided below, a spouse or domestic partner of a member may exercise the powers and privileges of the member. If title to a Lot 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) vote per Lot. Membership does not include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. Membership shall be appurtenant to the Lot and shall be transferred automatically by conveyance of that Lot and may be transferred only in connection with the transfer of title.

**Section 5. Entity Members.** 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, or other designated agent of such corporation, manager or member of such limited liability company, partner of such partnership, beneficiary or other designated agent of such trust, or agent of such other legal entity shall be eligible to represent such entity in the affairs of the Association. Such person's relationship with the Association shall terminate automatically upon the termination of such person's relationship with the

entity which is the Owner, which will create a vacancy in any elected or appointed position within the Association in which such person may have been serving, to be filled by the Board.

**Section 6. Voting.** Each Lot shall be entitled to one equally weighted vote, which vote may be cast by the Owner, the Owner's spouse or domestic partner, or by a lawful proxy as provided below. When more than one (1) Person owns a Lot, the vote for such Lot shall be exercised as they determine between or among themselves, but in no event shall more than one (1) vote be cast with respect to any Lot. If only one (1) co-Owner attempts to cast the vote for a Lot, it shall be conclusively presumed that such co-Owner is authorized on behalf of all co-Owners to cast the vote for such Lot. In the event of disagreement among co-Owners and an attempt by two (2) or more of them to cast such vote, such Persons shall not be recognized and such vote or votes shall not be counted. No Owner shall be eligible to vote, either in person or by proxy, or to be elected to the Board, if that Owner is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association or if the Owner has had its voting rights suspended for the infraction of any provision of the Declaration, these Bylaws, or any rule of the Association. If the voting rights of an Owner have been suspended, that Owner shall not be counted as an eligible vote for purposes of establishing a Majority or a quorum or for purposes of amending these Bylaws or the Declaration.

**Section 7. Majority.** As used in these Bylaws, the term "majority" shall mean those votes, Owners, or other group as the context may indicate totaling more than fifty (50%) percent of the total number of eligible votes, Owners, or other group, respectively. Unless otherwise specifically stated, the words "majority vote" mean more than fifty (50%) percent of those voting in person or by proxy. Except as otherwise specifically provided in the Declaration or these Bylaws, all decisions shall be by majority vote.

**Section 8. Purpose.** The Association shall have the responsibility of administering the Property, establishing the means and methods of collecting the contributions to the Common Expenses, arranging for the management of the Property and performing all of the other acts that may be required to be performed by the Association pursuant to the Act, the Georgia Nonprofit Corporation Code and the Declaration. Except as to those matters which the Declaration, the Act or the Georgia Nonprofit Corporation Code specifically require to be performed by the vote of the Association membership, the administration of the foregoing responsibilities shall be performed by the Board of Directors as more particularly set forth below.

### **Section 9. Electronic Documents and Signatures.**

(a) **Documents.** When authorized by the Board, any document, record or instrument required under the Declaration or these Bylaws to be "written" or "in writing" shall be deemed satisfied by an Electronic Document. "Electronic Document" means information created, transmitted, received, or stored by electronic means and retrievable in human perceivable form, such as e-mail, web pages, electronic documents, facsimile transmissions, or similar electronic transmissions. Records, documents and instruments shall not be denied effect or validity solely on the grounds that they are electronic.

(b) **Signatures.** Whenever these Bylaws require a signature on a document, record or instrument, an electronic signature satisfies that requirement only if: (1) the signature is easily recognizable as a Secure Electronic Signature which is capable of verification, under the sole control of the signatory, and attached to

the electronic document in such a way that the document cannot be modified without invalidating the signature; or (2) the Board reasonably believes that the signatory affixed the signature with the intent to sign the Electronic Document, and that the Electronic Document has not been modified since the signature was affixed.

(c) Verification and Liability for Falsification. The Board may require reasonable verification of any electronic signature, document, record or instrument. Absent or pending verification, the Board may refuse to accept any electronic signature or Electronic Document which, in the Board's sole discretion, is not clearly authentic. Neither the Board nor the Association shall be liable to any Association member or any other Person for accepting or acting in reliance upon an electronic signature or Electronic Document which the Board reasonably believes to be authentic, or rejecting any such item which the Board reasonably believes to not be authentic. Any member or Person who negligently, recklessly or intentionally submits any falsified Electronic Document or unauthorized electronic signature shall fully indemnify the Association for actual damages, reasonable attorneys' fees actually incurred and expenses incurred as a result of such acts.

## **Article II.19**

### **Meetings of Members**

**Section 10. Annual Meetings.** The regular annual meeting of the members shall be held during November or December of each year with the date, hour, and place to be set by the Board of Directors.

**Section 11. Special Meetings.** Special meetings of the members may be called for any purpose at any time by the President, the Secretary, or by request of any two (2) or more Board members, or upon written petition of twenty-five (25%) percent of the Lot Owners. Any such written petition by the members must identify the special meeting purpose on each page of the petition and must be for a purpose on which the members are authorized to act under these Bylaws or the Declaration. The petition, with original signatures, must be submitted to the Association's Secretary. The Secretary shall then verify that the required number of members have joined in the petition and shall submit all proper petitions to the Association's President. The President shall then promptly call a special meeting for all lawful purposes stated in the petition, and the Secretary shall send notice of the meeting in accordance with these Bylaws.

**Section 12. Notice of Meetings.** The Secretary shall mail or deliver to each Owner of Lots of record or to the Lots a notice of each annual or special meeting of the Association at least twenty-one (21) days prior to each annual meeting and at least seven (7) days prior to each special meeting. The notice shall state the purpose of any special meeting, as well as the time and place where it is to be held. The notice of an annual meeting shall state the time and place of the meeting. If any Owner wishes notice to be given at an address other than his or her Lot, the Owner shall designate such other address by written notice to the Secretary. The mailing or delivering of a meeting notice as provided in this Section or in Article VI, Section 1 hereof shall constitute proper service of notice.

**Section 13. Waiver of Notice.** Waiver of notice of a meeting of the Owners shall be deemed the equivalent of proper notice. Any Owner may, in writing, waive notice of any Association meeting, either before

or after such meeting. Attendance at a meeting by an Owner, whether in person or represented by proxy, shall be deemed waiver by such Owner of notice of the time, date, and place thereof unless such Owner specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted at such meeting unless objection to lack of notice is raised before the business, of which proper notice was not given, is put to a vote.

**Section 14. Quorum.** Except as may be provided elsewhere, the presence, in person or by proxy at the beginning of the meeting, of Owners entitled to cast one fifth (1/5) of the eligible vote of the Association shall constitute a quorum. Once a quorum is established for a meeting, it shall conclusively be presumed to exist until the meeting is adjourned and shall not need to be reestablished. Owners whose voting rights have been suspended pursuant hereto shall not be counted as eligible votes toward the quorum requirement.

**Section 15. Adjournment.** Any meeting of the Owners may be adjourned for periods not exceeding ten (10) days by vote of the Owners holding the Majority of the votes represented at such meeting, regardless of whether a quorum is present. Any business which could be transacted properly at the original session of the meeting may be transacted at a reconvened session, and no additional notice of such reconvened session shall be required.

**Section 16. Proxy.** Any member entitled to vote may do so by written proxy duly executed by the member setting forth the meeting at which the proxy is valid. To be valid, a proxy must be signed, dated, and filed with the Secretary prior to the opening of the meeting for which it is to be used. Proxies may be delivered to the Board by personal delivery, U.S. Mail, facsimile transmission, email, or other electronic means to any Board member or the property manager. Proxies may be revoked only by written notice delivered to the Association, except that the presence in person by the proxy giver at a meeting for which the proxy is given shall automatically invalidate the proxy for that meeting. A proxy holder may not appoint a substitute proxy holder unless expressly authorized to do so in the proxy. Members whose voting rights have been suspended hereunder may not act as proxy for another member.

**Section 17. Action Taken Without a Meeting.** In the Board's discretion, any action that may be taken by the Association members at any annual, regular, or special meeting may be taken without a meeting by written consent, written ballot, or electronic vote, as provided below.

(a) **Ballot.** If the Board elects to propose a membership action by ballot in lieu of a meeting, then the Board must submit or deliver a written ballot to every member entitled to vote on the matter, and the ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. However, such requirements shall not apply to action by written consent in accordance with subsection (b) below, and only the Board may authorize action by ballot hereunder. When the Board authorizes ballot voting under this subsection (a), ballots may be delivered to the members and/or returned by members by electronic mail. Approval by written ballot shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

All solicitations for votes by written ballot shall: (2) indicate the number of responses needed to meet the quorum requirements; (3) state the percentage of approvals necessary to approve each matter other than election of directors; and (4) specify the time by which a ballot must be received by the Board in order to be counted. A written ballot may not be revoked. The Association shall maintain such ballots in its file for at least three (3) years.

(b)55 Written Consent. Approval by written consent in lieu of a meeting shall be valid only when the number of written consents received equals or exceeds the requisite majority of the voting power for such action. Executed written consents shall be included in the minutes or filed with the Association's records, and the Board may accept properly authenticated documents sent by electronic mail as written consents hereunder. If an action of the members is approved by written consent hereunder, the Board shall issue written notice of such approval to all members who did not sign written consents. Membership approval shall be effective ten (10) days after written notice is issued; provided, however, if the consent is to an amendment to the Declaration or Bylaws which must be recorded, the effective date shall be no earlier than the date of recording of such amendment. It shall not be necessary to follow the procedural requirements of subsection (a) above to take action by written consent under this subsection (b).

**Section 18.113 Order of Business**. At all meetings of the Association, Roberts Rules of Order (latest edition) shall govern when not in conflict with the Declaration, these Bylaws or the Articles of Incorporation.

### **Article III.219**

#### **Board of Directors**

#### **C. Composition and Selection**

**Section 20. Composition**. The affairs of the Association shall be governed by a Board of Directors composed of not less than five (5) nor more than nine (9) persons, such number to be determined by Board resolution. The directors shall be Owners or spouses or Domestic Partners of such Owners; however, no Owner and his or her spouse, Domestic Partner or co-Owner may serve on the Board at the same time.

**Section 21. Term of Office**. Those directors serving on the Effective Date of these Bylaws shall remain in office until the terms for which they were elected expire. Successor directors shall be elected by the vote of those members present or represented by proxy, at the annual or other Association meeting, a quorum being present. Those persons receiving the most votes shall be elected to the number of positions to be filled. All successor directors shall be elected for two (2) year terms and shall hold office until their successors are elected.

#### **Section 22. Removal of Directors**

(a) **By the Association Membership.** At any duly called Association meeting, for which the notice given included notice of a vote to remove directors, any one or more Board members may be removed with or without cause by a Majority of the Association members, and a successor may then and there be elected to fill the vacancy created. Any director whose removal has been proposed by the Association membership shall be given at least ten (10) days notice of the calling of the meeting to consider his or her removal and the purpose thereof and shall be given an opportunity to be heard at the meeting.

(b) **By the Board of Directors.** In addition to the above, any director may be removed by the vote of a Majority of the other directors if the director: (i) has had three (3) unexcused absences, in any term, from regularly scheduled Board meetings; (ii) is in violation of any provision of the Declaration, Bylaws or Association rules; (iii) is more than thirty (30) days past due in the payment of any assessment; or (4) was appointed to the Board to fill a vacancy, and not elected by the Association membership.

**Section 23. Vacancies.** Vacancies in the Board caused by any reason, except the removal of a director by vote of the membership, shall be filled by a vote of the Majority of the remaining directors, even though less than a quorum, at any Board meeting. The successor selected shall hold office for the remainder of the term of the director being replaced.

**Section 24. Compensation.** Directors shall not be compensated for services as such unless and only to the extent that compensation is authorized by a Majority vote of the members. Directors may be reimbursed for the expenses incurred in carrying out their duties as directors upon Board approval of such expenses. Directors also may be given nominal gifts or tokens of appreciation by the Association for recognition of services performed not to exceed a value of \$100.00 per calendar year. For purposes hereof, reasonable food and beverages purchased for Board meetings shall not be considered compensation.

**Section 25. Director Conflicts of Interest.** Nothing herein shall prohibit a director from entering into a contract and being compensated for services or supplies furnished to the Association in a capacity other than as director, provided that the director's interest is disclosed to the Board and the contract is approved by a Majority of the directors who are at a meeting of the Board of Directors at which a quorum is present, excluding the director with whom the contract is made. The interested director shall not count for purposes of establishing a quorum of the Board. The interested director shall be entitled to be present at the meeting at which the proposed contract is discussed, but the director must leave the room during the discussion on such matter.

**Section 26. Nomination.** Nomination for election to the Board shall be made from the floor at the meeting, or, if elections are conducted by ballot or electronically in lieu of a meeting, by the method and date proscribed by the Board. Nominations also may be made by a nominating committee, if appointed by the Board.

**Section 27. Elections.** All Association members eligible to vote shall be entitled to cast their entire vote for each directorship to be filled. There shall be no cumulative voting. The directorships for which elections are held shall be filled by that number of candidates receiving the most votes. Voting for election of Board

members shall be by secret written ballot (unless dispensed by unanimous consent at the meeting at which such voting is conducted, or a slate of candidates is unopposed and is accepted by acclamation).

#### **D.28 Meetings.**

**Section 9. Regular Meetings.** Regular Board meetings may be held at such time and place as determined by the Board, but at least once every three (3) months. The newly elected Board shall endeavor to meet within ten (10) days after each annual Association meeting.

**Section 10. Special Meetings.** Special Board meetings may be called by the President on two (2) days' notice to each director given by mail, telephone, facsimile transmission, e-mail, or in person, which notice shall state the time, place, and purpose of the meeting. Special Board meetings shall be called by the President, Vice President, Secretary, or Treasurer in like manner and on like notice on the written request of at least two (2) directors.

**Section 11. Waiver of Notice.** Any director at any time, in writing, may waive notice of any Board meeting, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any Board meeting shall also constitute a waiver of notice by him or her of the time and place of such meeting. If all directors are present at any Board meeting, no notice shall be required, and any business may be transacted at such meeting.

**Section 12. Conduct of Meetings.** The President shall preside over all Board meetings, and the Secretary shall keep a minute book recording therein all resolutions adopted by the Board and a record of all transactions and proceedings occurring at such meetings. The presence, at the time an action is taken, of directors entitled to cast one-half of the votes of the Board shall constitute a quorum for the transaction of business. One or more directors who participate in a meeting by means of telephone or electronic communication shall be deemed present and in attendance for all purposes at such meeting, provided all persons participating in the meeting can hear each other. Directors may not use proxies for director meetings.

**Section 13. Open Meetings.** Board meetings need not be open to all members. If the Board permits members to attend Board meetings, then members other than directors may not participate in any discussion or deliberation unless expressly so authorized by the Board. Notwithstanding the above, the Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session. The Board may order the removal of any meeting guest who, in the Board's opinion, either disrupts the conduct of business at the meeting or fails to leave the meeting upon request after an announcement of reconvening in executive session.

**Section 14. Action Without a Meeting.** Any Board action required or permitted to be taken at any meeting may be taken without a meeting if a Majority of the directors consent in writing to such action. The written consents must describe the action taken and be signed by no fewer than a Majority of the directors. The

written consents shall be filed with the minutes of the Board. For purposes hereof, written consents of directors may be given by electronic mail or other electronic document.

**E.29 Powers and Duties.**

**Section 15. Powers and Duties.** The Board of Directors shall manage the affairs of the Association and shall have all the powers and duties necessary for the administration of the Property and may do all such acts and things as are not by the Act, the Declaration, the Articles of Incorporation, or these Bylaws directed to be done and exercised exclusively by the members. In addition to the duties imposed by these Bylaws, the Board of Directors shall have the power to and shall be responsible for the following, in way of explanation, but not limitation:

(d) preparing and adopting an annual budget, in which there shall be established the contribution of each Owner to the Common Expenses;

(e) making assessments to defray the Common Expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment;

(f) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility, as defined in the Declaration;

(g) designating, hiring, and dismissing the personnel necessary for the operation of the Association and the maintenance, repair, and replacement of the Common Property, Association property, and the Area of Common Responsibility and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;

(h) collecting the assessments, depositing the proceeds thereof in a financial depository or institution which it shall approve, or otherwise investing the proceeds in accordance with any limitations set forth in O.C.G.A. Section 14-3-302, and using the proceeds to administer the Association;

(i) making and amending rules and regulations and imposing sanctions for violation thereof, including reasonable monetary fines;

(j) opening bank or other financial accounts on behalf of the Association, and designating the signatories required;

(k) making or contracting for repairs, additions, and improvements to, or alterations of, the Common Property and Area of Common Responsibility, in accordance with the other provisions of the Declaration and these Bylaws, after damage or destruction by fire or other casualty;

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

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

(n) paying the costs of all services rendered to the Association or its members and not directly chargeable to specific Owners;

(o) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred; and

(p) contracting with any Person for the performance of various duties and functions. The Board shall have the power to enter into common management agreements with trusts, condominium associations, or other associations or corporations. Any and all functions of the Association shall be fully transferable by the Board, in whole or in part, to any other entity.

**Section 16.2217 Management Agent.** The Association may, but shall not be required to, hire a professional management agent or agents, at a compensation established by the Board, to perform such duties and services as the Board of Directors shall authorize. The Board shall use reasonable efforts in any management contract to provide for termination of such contract with or without cause and without penalty, upon no more than thirty (30) days written notice, and for a term not in excess of one (1) year.

**Section 17. Borrowing.** The Board shall have the power to borrow money for the purpose of maintenance, repair, restoration or improvement of the Area of Common Responsibility and facilities without the approval of the members of the Association. The Board also shall be authorized to borrow money for other purposes (including, but not limited to modifying, improving or adding amenities to the Property), but, in such case, if the total amount of such borrowing exceeds or would exceed ten thousand (\$10,000.00) dollars outstanding debt at any one time, such borrowing must first be approved by members holding a Majority of the total eligible Association vote.

**Section 18. Liability and Indemnification of Directors, Officers and Committee Members** The Association shall indemnify every officer, director and committee member against any and all expenses, including attorney's fees, reasonably incurred by or imposed upon such person in connection with any action, suit,

or other proceeding (including settlement of any such action, suit, or proceeding, if approved by the then Board of Directors) to which he or she may be made a party by reason of being or having been an officer, director or committee member, whether or not such person holds such position at the time such expenses are incurred. The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, or for injury or damage caused by any such person in the performance of his or her duties, except for his or her own individual willful misfeasance or malfeasance. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director or committee member, or former officer, director or committee member, may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and, if obtainable, officers' and directors' liability insurance to fund this obligation, and the insurance shall be written as provided in the Declaration.

### **F.30 Committees.**

**Section 19. Nominating Committee.** Pursuant to Section 7 of this Article, there may be a Nominating Committee appointed to perform the functions specified in Section 7 of this Article.

**Section 20. Architectural Control Committee.** The Board may establish an Architectural Control Committee for the purpose of establishing and maintaining architectural standards in the Property as provided in the Declaration.

**Section 21. Other Committees.** There shall be such other committees as the Board shall determine with the powers and duties that the Board shall authorize.

**Section 22. Service on Committees.** Unless otherwise provided in these Bylaws or in the resolution authorizing a particular committee, the members of any committee shall be appointed by the President and shall serve at the pleasure of the Board of Directors. Any committee member may be removed with or without cause at any time and with or without a successor being named.

## Article IV.731

### Officers

**Section 32. Designation.** The principal officers of the Association shall be the President, Vice President, Secretary, and Treasurer. The President, Vice President and Secretary must be Board members. The Treasurer shall be elected by the Board, but need not be a Board member. The Board may appoint one or more Assistant Treasurers, Assistant Secretaries, and such other subordinate officers as in its judgment may be necessary. Any assistant or subordinate officers shall not be required to be Board members. Except for the offices of Secretary and Treasurer, which may be held by the same person, no person may hold more than one (1) office.

**Section 33. Election of Officers.** The Association officers shall be elected annually by the Board at the first meeting of the Board following each annual meeting of the members and shall hold office at the pleasure of the Board and until a successor is elected.

**Section 34. Removal of Officers.** Upon the affirmative vote of a Majority of the Board members, any officer may be removed, either with or without cause, and a successor may be elected, at any time.

**Section 35. Vacancies.** A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board for the unexpired portion of the term.

**Section 36. President.** The President shall be the chief executive officer of the Association and shall preside at all Association and Board meetings. The President shall have all the general powers and duties which are incident to the office of the president of a corporation organized under the Georgia Nonprofit Corporation Code, including, but not limited to, the power to establish agendas for Association and Board meetings, and to appoint committees from among the members as he or she may decide is appropriate to assist in the conduct of the affairs of the Association.

**Section 37. Vice President.** The Vice President shall act in the President's absence and shall have all powers, duties, and responsibilities provided for the President when so acting.

**Section 38. Secretary.** The Secretary shall keep the minutes of all Association and Board meetings, shall have charge of such books and papers as the Board may direct, and shall, in general, perform all duties incident to the office of the secretary of a corporation organized under Georgia law.

**Section 39. Treasurer.** The Treasurer shall have the responsibility for the Association's funds and securities. The Treasurer shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, for preparing all required financial statements and tax returns, and for the deposit of all monies and other valuable effects in the name of the Association in such depositories as may from time to time be designated by the Board. The Treasurer shall be responsible for the preparation of the budget as provided in the Declaration. The Treasurer may delegate all or a part of the preparation and notification duties associated with the above responsibilities to a management agent.

**Section 40. Other Officers.** Other offices may be created by the Board, and the Board members which hold such offices shall have such titles and duties as are defined by the Board.

**Section 41. Agreements, Contracts, Deeds, Leases, Etc.** All agreements, contracts, deeds, leases, checks, promissory notes, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by Board resolution.

## Article V.842

### Rule Making and Enforcement

**Section 43. Authority and Enforcement.** The Property shall be used only for those uses and purposes set out in the Declaration. The Board of Directors shall have the authority to make, modify, repeal and enforce reasonable rules and regulations governing the conduct, use, and enjoyment of Lots and the Common Property. Copies of all such rules and regulations shall be furnished to all Owners and Occupants and/or posted on an Association website. Any rule or regulation may be repealed by the affirmative vote or written consent of a Majority of the total Association vote at an annual or special meeting of the membership.

Every Owner and Occupant shall comply with the Declaration, Bylaws and rules and regulations of the Association, and any lack of compliance shall entitle the Association and, in an appropriate case, one or more aggrieved Lot Owners, to take action to enforce the terms of the Declaration, Bylaws or rules and regulations.

1. The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the Owner's Lot, and to suspend an Owner's right to vote or to use the Common Property for violation of any duty imposed under the Declaration, these Bylaws, or any Association rules and regulations; provided, however, nothing herein shall authorize the Association or the Board to deny ingress and egress to or from a Lot. If any Occupant violates the Declaration, Bylaws or Association rules and a fine is imposed, the fine may be imposed against the Owner and/or Occupant, subject to Section 2 below. The failure of the Board to enforce any provision of the Declaration, Bylaws, or any rule or regulation shall not be deemed a waiver of the right of the Board to do so thereafter.

In any enforcement action taken by the Association under this Article V, to the maximum extent permissible, all costs incurred by the Association in abating a violation or otherwise taking action to enforce the

Declaration, Bylaws or Association rules, including reasonable attorney's fees actually incurred, may be assessed against the violating Owner and/or Occupant, pursuant to Paragraph 7(b) of the Declaration.

**Section 44. Fining and Suspension Procedure.** The Board shall not impose a fine or suspend the right to vote or to use the Common Property, unless and until the Association has sent or delivered written notice to the violator as provided in subsection (a) below. However, compliance with this Section 2 shall not be required for the following: (i) late charges on delinquent assessments, (ii) suspension of voting rights if an Owner is shown on the Association's records to be more than thirty (30) days delinquent in any payment due the Association, in which case suspension of the right to vote shall be automatic or (iii) suspension of common utility services, which shall be governed by Paragraph 7(c)(v) of the Declaration.

(r) **Notice.** If any provision of the Declaration or Bylaws or any Association rule is violated, the Board shall send the violator written notice identifying the violation and fine(s) and/or suspension(s) being imposed and advising the violator of the right to request a hearing before the Board to contest the violation or the fine(s) and/or suspension(s) or to request reconsideration of the fine(s) and/or suspensions. Fines and suspensions may be effective or commence upon the sending of such notice or such later date specified in such notice, notwithstanding the violator's right to request a hearing before the Board to challenge the fine(s) and/or suspension(s). In the event of a continuing violation, each day the violation continues or occurs again constitutes a separate offense, and fines may be imposed on a per diem basis without further notice to the violator.

(s) **Hearing.** If a written request for hearing is received from the violator within ten (10) days of the date of the violation notice provided above, then the Board shall schedule and hold in executive session a hearing affording the violator a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing. The Board may establish rules of conduct for such hearing, which may include limits on time and on the number of participants who may be present at one time. Failure to request a timely hearing as provided herein shall result in loss of the right to challenge and request reconsideration of the fines.

**Section 45.3320 Additional Enforcement Rights.** Notwithstanding anything to the contrary herein contained, the Association, acting through the Board, may elect to enforce any provision of the Declaration, the Bylaws, or the rules and regulations by self-help or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity for compliance with the procedure set forth in Section 2 of this Article.

The Association or its duly authorized agent shall have the power to enter a Lot or upon any portion of the Common Property to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates the Declaration, the Bylaws, or the rules and regulations. All costs of self-help or of otherwise enforcing the Declaration, Bylaws or Association rules, including reasonable attorney's fees actually incurred by the Association, shall be assessed against the violating Lot Owner. Additionally, the Association shall have the authority to record in the Gwinnett County land records a notice of violation identifying an uncured violation of the Declaration, Bylaws or rules and regulations regarding the Lot.

## **Article VI.946**

### **Miscellaneous**

**Section 47. Notices.** All notices, demands, bills, statements or other communications given under these Bylaws or the Declaration shall be in writing and, unless prohibited under these Bylaws or the Declaration, shall be given: (1) by personal delivery to the addressee; (2) by United States mail, first class, postage prepaid; (3) by electronic mail or other electronic document; or (4) via facsimile.

Notice sent by one of the methods described above shall be deemed to have been duly given:

(a) If to a Lot Owner, at the mailing address, electronic mail address or facsimile number which the Owner has designated in writing and filed with the Secretary, or if no such address has been designated, at the address of the Lot of such Owner;

(b) If to an Occupant, to the address of the Lot occupied and/or the electronic mail address or facsimile number which the Occupant has designated in writing and filed with the Secretary; or

(c) If to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other mailing address, electronic mail address or facsimile number as shall be designated in writing and approved for use by the Association's Board of Directors.

**Section 48.4421 Severability.** The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these Bylaws or the Declaration.

**Section 49. Captions.** The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of these Bylaws or the intent of any provision thereof.

**Section 50. Gender and Grammar.** The use of the masculine gender in these Bylaws 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.

**Section 51. Fiscal Year.** The fiscal year of the Association may be set by Board resolution or, in the absence thereof, shall be the calendar year.

**Section 52. Financial Review.** A financial review of the accounts of the Association shall be performed annually in the manner provided by the Board. However, after having received the Board's financial review at the annual meeting, the Owners may, by a Majority of the total Association vote, require that the Association accounts be audited as a Common Expense by an independent accountant.

**Section 53. Conflicts.** The duties and powers of the Association shall be those set forth in the Act, the Georgia Nonprofit Corporation Code, the Declaration, these Bylaws, and the Articles of Incorporation, together with those reasonably implied to affect the purposes of the Association. If there are conflicts or inconsistencies between such, then the provisions of the Act, the Georgia Nonprofit Corporation Code (as may be applicable), the Declaration, the Articles of Incorporation and these Bylaws, in that order, shall prevail, and each Owner of a Lot, by acceptance of a deed or other conveyance therefor, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies.

**Section 54. Amendment.** Except where a higher vote is required for action under a particular provision of the Declaration or Bylaws, these Bylaws may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the members holding sixty-six and two-thirds (66-2/3%) percent of the total eligible vote of the Association, unless the Act permits amendment by a lesser percentage, in which case this Declaration may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the members of the Association holding a Majority of the total eligible vote thereof. Notice of a meeting, if any, at which an amendment will be considered shall state that 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 filed in the Gwinnett County, Georgia land records. Any amendment covered by Paragraph 20 of the Declaration shall not be effective until the requirements of that Paragraph are met. Owners whose voting rights have been suspended pursuant to the Declaration or these Bylaws shall not be counted as eligible votes toward the amendment requirement.

**If legal action is not instituted to challenge the validity of an amendment within one (1) year of the recording of the amendment in the Gwinnett County, Georgia land records, then such amendment shall be presumed to be validly adopted.**

**Section 55. Books and Records.** To the extent provided in O.C.G.A. Section 14-3-1602, all Association members and any institutional holder of a first Mortgage shall be entitled to inspect Association records at a reasonable time and location specified by the Association, upon written request at least five (5) business days before the date on which the member wishes to inspect and copy. The Association may impose a reasonable charge, covering the cost of labor and material, for copies of any documents provided to the member. Notwithstanding anything to the contrary, the Board may limit or preclude member inspection of confidential or privileged documents, including attorney/client privileged communications, executive session meeting minutes, and financial records or accounts of other members. Minutes for any Board or Association meetings do not become effective and an official Association record until approved by the Board or Association membership, as applicable, at a subsequent meeting.

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### **CERTIFICATION**

2. I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Woodehaven at Chattahoochee Crossing Property Owner's Association, Inc., a Georgia corporation;

That the foregoing Bylaws constitute the Amended and Restated Bylaws of said Association, as duly adopted by the Board of Directors and the members of the Association on the \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

**WOODEHAVEN AT CHATTAHOOCHEE  
CROSSING PROPERTY OWNER'S ASSOCIATION,**

**INC.**

\_\_\_\_\_(Seal)  
Secretary

[Corporate Seal]

JSL:Woodehaven at Chatt -Docs- Decl & By-Laws- Final Prep - C.doc(4014)

**EXHIBIT "B"**

**BYLAWS**

OF

WOODEHAVEN AT CHATTAHOOCHEE CROSSING

PROPERTY OWNER'S ASSOCIATION, INC.

WEISSMAN, NOWACK, CURRY & WILCO, P.C.

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