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Return to: Weissman, Nowack, Curry, & Wilco, P. C.
One Alliance Center, 4th Floor
3500 Lenox Road
Atlanta, Georgia 30326
Attention: Tanya Fairclough-James

STATE OF GEORGIA
COUNTY OF GWINNETT

Reference: Deed Book:
24120 Page: 71
Deed Book: 23734
Page: 153

AMENDED AND RESTATED DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR OLD SUWANEE

IMPORTANT NOTICE

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.

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PREPARED BY:

Weissman Nowack
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CHANGING THE LANDSCAPE
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WHEREAS, a Declaration of Covenants, Restrictions and Easements for Old Suwanee was recorded on July 6, 2001, in Deed Book 24170, Page 71, *et seq.*, Gwinnett County, Georgia land records (hereinafter referred to as the "Original Declaration") as may be amended; and

WHEREAS, **Paragraph 9, Section 9.3** of the Original Declaration provides that the Original Declaration may be amended upon the passing of a resolution adopting the proposed amendment at a meeting of the members, and the assent of Lot Owners in the Community having at least 2/3 of the total vote of the Old Suwanee Homeowners Association, Inc. ("Association"); and

WHEREAS, Lot Owners having at least 2/3 of the total vote of the Association desire to amend the Original Declaration and have approved this Amendment; and

WHEREAS, these amendments are not material with respect to any mortgagees on Lots in that they do not materially and adversely affect the security title or interest of any mortgagee; provided, however, if a court of competent jurisdiction determines that these amendments do so without such mortgagee's consent, then these amendments shall not be binding on the mortgagee so involved, unless it consents hereto; and if such consent is not forthcoming, then the provisions of the Original Declaration prior to these amendments shall control with respect to the affected mortgagee;

NOW, THEREFORE, the Original Declaration and all exhibits thereto, are hereby stricken in their entirety and this Declaration is simultaneously substituted therefore:

DECLARATION OF PROTECTIVE COVENANTS AND EASEMENTS FOR OLD SUWANEE

IMPORTANT NOTICE

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.

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1. NAME

The name of the Community is Old Suwaneesm, 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

Unless the context otherwise requires, capitalized terms used in this Declaration, the Bylaws, and the Articles of Incorporation shall be defined as set forth in this Paragraph 2. Otherwise, the 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.

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 mean the committee established to exercise the architectural review powers set forth herein, which shall be the Board of Directors of the Association unless the Board appoints a separate Architectural Control Committee.

C. Articles of Incorporation or Articles means the Articles of Incorporation of Old Suwanee Homeowners Association, Inc., filed with the Secretary of State of the State of Georgia.

D. Association means Old Suwanee Homeowners Association, Inc., a Georgia nonprofit corporation, its successors or assigns.

E. Association Legal Documents means this Declaration and all exhibits hereto, the Bylaws, the Articles of Incorporation, the plats and all rules and regulations and architectural guidelines for the Association, all as may be supplemented or amended.

F. Board or Board of Directors means the body responsible for management and operation of the Association.

G. Bylaws means the Bylaws of Old Suwanee Homeowners Association, Inc.,

H. 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.

I. Common Expenses means the expenses incurred or anticipated to be incurred for the general benefit of all Lots, including, but not limited to, those expenses incurred for maintaining, repairing, replacing, and operating the Common Property.

J. Community 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 Community 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.

K. Community-Wide Standard means the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors and the Architectural Control Committee.

L. Declaration means this Declaration of Protective Covenants and Easements for Old Suwanee.

- M. Director** means a member of the Association's Board of Directors.
- N. Domestic Partner** means 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.
- O. Effective Date** means the date that this Declaration is recorded in the Gwinnett County, Georgia land records.
- P. Eligible Mortgage Holder** means a holder of a first Mortgage secured by a Lot who has submitted a request in writing to the Association to be deemed an Eligible Mortgage Holder. Such notice must include the mortgage holder's name and address and the Lot number or address of the property in the Community secured by such mortgage.
- Q. Lot** means a portion of the Community intended for ownership and use as a single-family dwelling site subject to this Declaration, as shown may be on the Plats for the Community recorded in the Gwinnett County, Georgia land records.
- R. 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.
- S. Mortgagee or Mortgage Holder** means the holder of any Mortgage.
- T. Occupant** means any person staying overnight in a dwelling on a Lot for a total of more than 30 days, either consecutive or nonconsecutive, in any calendar year.
- U. Officer** means an individual who is elected by the Board of Directors to serve as President, Vice President, Secretary, or Treasurer, or to hold such other office as may be established by the Board of Directors.
- V. 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.
- W. Person** means any individual, corporation, limited liability company, firm, association, partnership, trust, or other legal entity.
- X. Plats** means those plats of the survey relating to the Community filed in Plat Book 86, Page 264-265; of the Gwinnett County, Georgia land records. All of the Plats of survey are incorporated herein by this reference.
- Y. Violator** means any Owner who violates the Association Legal Documents and any Owner's family member, guest or Occupant who violates such provisions; provided, however, if an Owner's family member, guest or Occupant violates the Association Legal Documents, the Owner of the relevant Lot also shall be considered a Violator.

3. SUBMITTED PROPERTY AND ADDITIONAL PROPERTY

A. Submitted Property

The real property in the Community subject to this Declaration and the Act is located in Land Lots 209, 210 and 237, of the 7th the District of Gwinnett County, Georgia, being more particularly described in

Exhibit "A" attached to this Declaration, and incorporated herein by this reference and as may be shown on the Plats.

B. Additional Property

Any property shown on any Plat, which property has not been submitted to the Declaration, may be submitted to the Declaration by recording a consent form executed by the owner of such property and by the Board of Directors. Other property not shown on any Plat may be submitted to this Declaration with the approval of Owners holding at least a majority of the eligible vote of the total Association membership and by recording a consent form executed by the owner of such property and by the Board of Directors.

4. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

A. Membership

The Association shall have one class of membership. Each Lot Owner shall be a member of the Association. This does not include persons who hold an interest merely as security for the performance of an obligation. The giving of a security interest shall not terminate an Owner's membership. No Owner, whether one or more Persons, shall have more than one membership per Lot owned in the Community. An Owner's spouse or Domestic Partner may exercise all membership rights and privileges of the Owner

B. Voting

The Owner(s) of the Lot shall be entitled to one equally weighted vote for such Lot, which vote may be exercised and suspended as provided in this Declaration and the Bylaws.

5. ALLOCATION OF LIABILITY FOR COMMON EXPENSES

A. General Allocations

Except as provided below, or elsewhere in the Act or the Association Legal Documents, 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 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.

6. ASSESSMENTS

A. Purpose of Assessment

The Association shall have the power to levy assessments as provided herein and in the Act. Assessments shall be used for any purpose the Board of Directors determines will benefit the Owners or the Community.

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 all assessments and other charges levied pursuant to this Declaration and the Bylaws.

All assessments and charges levied against a Lot and its Owner, together with interest, costs and reasonable attorneys' fees actually incurred (including post-judgment attorneys' fees, costs and expenses), and rents (if the Board of Directors so elects), in the maximum amounts permitted under the Act, shall be:

(1) a charge and a continuing lien against such Lot; and (2) the personal obligation of the Person who is the Owner of the Lot on the due date of the assessment. 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 of the Lot. The Association, in the Board's discretion, may record a notice of such lien in the Gwinnett County, Georgia land records evidencing the lien created under the Act and this Declaration. The lien provided for herein shall have priority as provided in the Act.

Assessments shall be paid in such manner and on such dates as determined by the Board of Directors. No Owner may exempt himself or herself from liability, or otherwise withhold payment of assessments, for any reason whatsoever.

C. Delinquent Assessments

All assessments and charges not paid on or before the due date shall be delinquent, and the Owner shall be in default. In addition to the powers set forth below for collection of unpaid assessments and charges, the Association shall be entitled to exercise all other rights and remedies provided by law and in equity to satisfy an Owner's debt.

If any assessment or charge, or any part or installment thereof, is not paid in full within 10 days of the due date, or such later date as may be provided by the Board of Directors:

(1) a late charge equal to the greater of \$10.00 or 10% 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;

(2) interest at the rate of 10% per annum, or such higher rate as may be authorized by the Act, shall accrue from the due date;

(3) the Board may accelerate and declare immediately due any unpaid installments of that Owner's assessments and charges. Upon acceleration, the Owner shall lose the privilege of paying such assessments and charges in installments, unless the Board otherwise reinstates such privilege in writing. If the Association has pending legal action against an Owner for unpaid assessments or charges, then no notice shall be required to accelerate unpaid installments of any annual or special assessments that come due during any fiscal year after such legal action commences, until all amounts owed are paid in full or the Board otherwise reinstates such privilege in writing; and

(4) the Association may bring legal action to collect all sums owed under the Declaration and Georgia law.

If assessments or other charges, or any part thereof, remain unpaid more than 30 days after the due date, the Owner's right to vote and use the Common Property are suspended automatically until all amounts owed are paid in full or the Board of Directors otherwise reinstates such rights in writing; provided, however, the Board may not deny ingress or egress to or from a Lot.

If part payment of assessments or other charges is made, the amount received may be applied first to post-judgment attorneys' fees, costs and expenses, then to costs and attorneys' fees not reduced to a judgment, then to interest, then to late charges, then to delinquent assessments and then to current assessments. Late charges may be assessed on delinquencies that are created by the application of current payments to outstanding delinquent assessments or charges.

D. Computation of Operating Budget and Assessment

To establish the annual assessment for a fiscal year, the Board of Directors shall prepare a budget covering the estimated costs of operating the Community, which may include a reserve contribution as provided below. The Board shall provide the budget to the Owners at least 21 days before the due date of such assessment, or the first installment thereof. The budget and the assessment shall become effective unless, before the due date of such assessment, a majority of the total Association membership votes to disapprove them at a duly called membership meeting.

If the membership disapproves the proposed budget or the Board of Directors fails for any reason to determine a new budget, the budget then in effect shall continue until a new budget is adopted as provided herein. The Board may adopt an adjusted budget at any time during the year following the procedure specified above.

The budget shall not operate as a limitation on expenditures by the Board of Directors. The budget is merely an estimate of Common Expenses on which the Board establishes the annual assessment.

E. Special Assessments

In addition to the all other assessments and charges provided for herein, the Board of Directors may levy a special assessment against all Owners for any purpose. Special assessments totaling more than \$500.00 per Lot in any fiscal year must first be approved by at least a majority of those Owners either voting by written consent or ballot pursuant to the Bylaws, or at least a majority of those Owners present or represented by proxy at a duly called meeting of the members, notice of which shall specify the purpose of such meeting.

F. Capital Budget and Contribution

The Board of Directors may prepare an annual or multi-year capital reserve budget and may establish a capital reserve fund contribution based on such budget. Capital reserve budgets should take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost.

G. Initiation Fee Upon Transfer of Lots

In addition to all other assessments and charges provided for herein, upon any conveyance or transfer of a Lot, other than to the spouse or heir of the Owner, the purchaser or grantee thereof shall be assessed and be subject to a non-refundable, non-prorated initiation fee ("Initiation Fee").

For the fiscal year of the Effective Date, the Initiation Fee shall be \$350.00. The Board of Directors may increase the Initiation Fee each year not more than 10% above the prior year's Initiation Fee amount.

The Initiation Fee shall not constitute an advance payment of the annual assessment. The Initiation Fee shall constitute a specific special assessment against such Lot, a continuing lien against such Lot, and a personal obligation of the Owner of such Lot, from the time it is due until it is paid in full and may be collected as provided herein.

H. Foreclosure Administration Fee

It is recognized that foreclosures of mortgages on Lots create substantial administrative and other burdens on the Association. These additional burdens on the Association include, but are not limited to, having to monitor the status of mortgages and legal periodicals to determine when foreclosures occur, searching the Gwinnett County, Georgia land records to determine the names of the purchasers at foreclosure sales, contacting the foreclosure purchasers/owners regarding foreclosure-purchaser responsibilities and assessment obligations and updating Association records multiple times to deal with just a single Lot. Pursuant to this Declaration and Section 44-3-225(a) of the Act, the Association is authorized to assess individual Owners certain fees and expenses occasioned by and benefiting just those Owners or those Owners' Lots. In accordance with these provisions, and in addition to annual assessments, special assessments, and other charges provided for in this Declaration, any Person who acquires a Lot at a foreclose sale of the mortgage on such Lot, or by deed in lieu of a foreclosure, will be required to pay the Association a Foreclosure Administration Fee of \$1,000.00 at the time the foreclosure deed or deed in lieu of foreclosure is recorded in the Gwinnett County, Georgia records. The Foreclosure Administration Fee shall constitute a specific assessment as described in this Declaration.

I. 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 and charges due and unpaid, including but not limited to any late charges, interest, fines, attorneys' fees or other charges against such Lot. The Association shall respond in writing within five business days of receipt of the request for a statement; provided, however, the Association may require the payment of a reasonable fee, 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, if such statement is reasonably relied upon in connection with the issuance of any Mortgage on such Lot.

J. 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 option of the Board of Directors, be: (1) distributed to the Owners; (2) credited to the next assessment chargeable to the Owners; or (3) added to the Association's capital reserve account.

7. MAINTENANCE RESPONSIBILITY

A. Owner's Responsibility

Each Owner shall maintain and keep his or her Lot and dwelling in good repair, condition and order. This maintenance obligation shall include, but not be limited to, roofs, gutters, downspouts, exterior building surfaces, foundations and foundation walls, windows, doors, trees, shrubs, grass, walks, walls and other improvements on the Owner's Lot. In addition, each Owner shall maintain any public right-of-way located between the Owner's Lot and the curb of the street(s) bordering such Lot. Such maintenance shall be performed consistent with this Declaration and the Community-Wide Standard established pursuant hereto. Each Owner shall perform his or her responsibility hereunder in such manner so as not to unreasonably disturb other Lot Owners.

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.

B. Association's Responsibility

The Association shall maintain, keep in good repair, replace and, in the Board of Directors' discretion, improve or alter the Common Property. This maintenance obligation shall include amenities, paved access and parking areas, greenbelts, trees, shrubs, grass, walks, drives and other improvements located on the Common Property. The Association shall also maintain and keep in good repair all water and sewer pipes or facilities which serve the Common Property, to the extent that such pipes and facilities are not maintained by public, private, or municipal utility companies.

The Association shall have the right, but not the obligation, to maintain public rights of way adjacent to the Community and other property not owned by the Association, if the Board of Directors in its sole discretion, determines that such maintenance would benefit the Community. At any point thereafter, the Board can cease to maintain such property and such maintenance obligation will revert back to the party originally responsible therefore.

The foregoing maintenance shall be performed consistent with the Community-Wide Standard.

If, during the course of performing its maintenance responsibilities hereunder, the Board 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 sole expense, without prior notice to the Owner, such being deemed an emergency situation hereunder.

If the Board of Directors determines that the need for maintenance or repair on the Common Property is caused through the willful or negligent act of any Owner or Occupant or his or her family, guests, tenants, or invitees, then the Association may charge the cost of any such maintenance, repair, or replacement as a specific special assessment against the Owner's or Occupant's Lot and the Owner thereof.

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

C. Failure to Maintain

If the Board of Directors determines that any Owner has failed or refused to discharge properly his or her maintenance, repair or replacement obligations pursuant to this Paragraph, then the Association shall give the Owner written notice of: (1) the Owner's failure or refusal; (2) the Association's right to provide necessary maintenance, repair, or replacement at the Owner's sole cost and expense; and (3) the maintenance, repair, or replacement deemed necessary by the Board.

Unless the Board determines that an emergency exists or a violation is re-occurring for which notice previously has been issued hereunder, the Owner shall have 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 10 days. If the Board determines that an emergency exists, a violation is re-occurring for which notice has been previously issued hereunder or an Owner has not complied with the demand given by the Association hereunder, the Association may provide any such maintenance, repair or replacement, the costs of which shall be a specific special assessment against the Owner and the Lot.

D. Maintenance Standards and Interpretation

The Board of Directors may establish, interpret and enforce maintenance standards for the Community. These standards may vary over time, however, the variances shall not constitute a waiver by the Board of the right to establish and enforce maintenance standards under this Paragraph. No Board decision or interpretation regarding maintenance standards shall constitute a binding precedent with respect to subsequent Board decisions or interpretations.

8. ARCHITECTURAL CONTROLS

A. Architectural Control Committee

The Architectural Control Committee ("ACC") shall constitute a standing committee of the Association. The ACC shall consist of the Board of Directors unless the Board of Directors delegates to other Persons the authority to serve on the ACC.

B. Limitation on Exterior Modifications

Except as otherwise provided herein, no Owner, Occupant, or any other person may, without written approval of the Board or ACC:

- (1) construct any dwelling or other improvement on a Lot;
- (2) make any change or alteration that affects the exterior appearance of the Lot; or
- (3) erect, place or post any object or thing on the Lot that affects the exterior appearance of the Lot.

Additionally, no modification shall encroach onto the Common Property unless expressly approved in writing by the Board.

C. Standards and Interpretation

The Board of Directors may establish, amend and publish written Community-Wide Standards for modifications that affect the exterior appearance of Lots. These standards may vary for different parts of the Community, based on street visibility and location of the proposed modification or Lot. Any standards established by the Board hereunder may be amended or vetoed by a majority of the total Association vote. No Board decision or interpretation regarding such standards shall constitute a binding precedent with respect to subsequent Board decisions or interpretations.

D. Application Process and Review

The Board of Directors may establish procedures, forms, conditions and requirements for the submission of applications for modifications to the exterior appearance of a Lot. Such applications shall be in writing and, unless otherwise provided by the Board, submitted to the ACC. If the application requests any variance from provisions of this Declaration or published Community-Wide Standards related to the exterior appearance of the Lot, the Owner must expressly identify such variance in the application. No approval issued hereunder shall authorize such a variance unless that variance is expressly identified in the application and specifically approved in writing by the Board or ACC.

Except as may otherwise be determined by the Board, the ACC or its designated representative shall be the sole arbiter of such application.

The standard for approval of such modifications shall include, but not be limited to: (1) aesthetic consideration; (2) materials to be used; (3) compliance with the Community-Wide Standards, this Declaration, or the design standards which may be established by the Board; (4) harmony with the external design of the existing dwellings, 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. The Board or ACC shall approve any request that it determines, in its reasonable discretion, to be in substantial compliance with such standard for approval.

E. Ruling on Application

If the Board or ACC fails to approve or to disapprove such application within 45 days after the application and all required information have been submitted, the Owner submitting the application may issue written notice, via certified mail, to the Association President, informing the President 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 10 days of receipt of the Owner's notice, the approval will not be required and this subparagraph will be deemed complied with as to the items specifically identified in the application. However, even if the requirements of this subparagraph are satisfied, nothing herein shall authorize anyone to construct or maintain any modification that is otherwise in violation of the Association Legal Documents, or of any applicable zoning or other laws. Except as provided in this subparagraph, no approval of a modification shall be valid unless issued in writing. Owners may not rely on any verbal approval or statements from any person as the approval required for a modification.

F. Appeal

If the ACC does not consist of the Board of Directors, and the ACC disapproves any application or part thereof, an Owner may, in writing, appeal the ACC's decision to the Board. The notice of appeal must

be sent to the Board by certified mail and received by the Board within 14 days from the date of the ACC's disapproval notice, or the decision of the ACC shall become final and all rights of appeal shall terminate. Within 45 days of receipt of a timely appeal, the Board shall approve, disapprove, or conditionally approve the Owner's application, and such ruling shall be final and binding on the Owner.

G. Commencement and Completion of Construction

All modifications approved hereunder must be commenced within six months from the date of approval, or such approval shall be deemed revoked, unless the Board or ACC gives a written extension for commencing the work. All work approved hereunder shall be completed in its entirety within six months from the date of commencement, unless otherwise agreed in writing by the Board or ACC.

H. Professional Consultants and Fees

The Board of Directors shall be authorized to charge, as a specific special assessment, against any Owner and Lot: (1) a reasonable administrative fee for review of modifications on, or submitted plans for, such Lot; and (2) reasonable fees for any architect, engineer or other professional consultant engaged by the Board to assist with review of modifications on, or submitted plans for, such Lot. Any professional consultants fees shall constitute specific assessments as described in this Declaration.

I. Limitation of Liability

The Association, Board of Directors, ACC, and members thereof, are not responsible for ensuring, and shall not be held liable for any injury, damage or loss arising out of: (1) the quality, structural integrity or soundness of any modification on a Lot; or (2) any modification's compliance with building codes, zoning regulations or other governmental requirements.

9. USE RESTRICTIONS

Each Owner shall be responsible for ensuring that the Owner's family, guests, tenants and Occupants comply with all provisions of the Association Legal Documents. In addition to the following use restrictions, the Board of Directors may establish rules and regulations in accordance with the terms hereof and as specified in the Bylaws.

A. Residential Use

Each Lot shall be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Lot or any portion of the Community, except that the Owner or Occupant residing in a dwelling on a Lot may conduct 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 or deliveries to the Lot by employees, clients, customers, suppliers, couriers, mail carriers, or other business invitees in greater volume than would normally be expected for a Lot without business activity;
- (3) the business activity does not involve use of the Common Property, except for necessary access to and from the Lot by permitted business invitees;
- (4) the business activity is legal and conforms to all zoning requirements for the Community;
- (5) the business activity does not increase any insurance premium paid by the Association or otherwise negatively affect the Association's ability to obtain insurance coverage; and

(6) the business activity is consistent with the residential character of the Community and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other Owners or Occupants, as determined in Board of Director's discretion.

The Association has no liability for any business activity in the Community. The Association also has no liability for any action or omission by it, its Directors, Officers, agents, representatives and/or vendors, that may adversely impact an Owner's or Occupant's business activity. Each Owner and Occupant hereby releases and holds harmless the Association, its Directors, Officers, agents, representatives and/or vendors, for any interruption or suspension of, or any damages to, any business activities conducted on a Lot. Owners and Occupants shall obtain whatever supplemental insurance may be necessary to protect their business assets, business continuity and business interests on their Lots. The Association is not obligated to obtain any insurance coverage for any Owner's or Occupant's business activity.

The term "business," as used in this provision, shall include, without limitation, any occupation, work or activity that involves the provision of goods or services to persons other than the provider's family for 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 therefore

B. Occupancy

(1) **Number of Occupants.** No more than two Occupants per bedroom are permitted in the dwelling, as such bedrooms are depicted on the plans for such dwelling approved by the applicable governmental agency. 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 of Directors shall grant variances to this restriction to comply with provisions of the Fair Housing Amendments Act of 1988.

If an Owner is a corporation, limited liability company, partnership, trust or other legal entity not being a natural person, the Owner 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 12 months without the Board's written consent.

Subdivision of Lots

No Lot may be subdivided into a smaller Lot without the prior written approval of the Board of Directors.

C. Use of Common Property

There shall be no obstruction of the Common Property, nor shall anything be kept, parked or stored on or removed from any part of the Common Property without the express written consent of the Board of Directors. The Association may remove and either discard or store any unauthorized personal property left or kept on the Common Property and the Association shall have no obligation to return, replace or reimburse the owner for such property. The Association is not liable to any Person for any loss of, theft of, or damage to any personal property.

The Board may allow an Owner or Occupant to temporarily reserve portions of the Common Property. Such Owner or Occupant, on behalf of himself or herself and his or her guests and family, assumes all risks associated with such use of the Common Property and all liability for any damage or injury to any person or property as a result of such use. The Association shall not be liable for any damage or injury resulting from such use.

D. Prohibition of Damage and Illegal Conduct

Without prior written consent of the Board of Directors, nothing shall be done or kept in the Community which would increase the Common Expenses, damage the Common Property, or be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body. Noxious, destructive, offensive, hazardous, or unsanitary activity shall not be carried on in the Community, as such activity or conduct may be defined in the Association's rules and regulations.

E. Firearms

The display or discharge of firearms on the Common Property is prohibited, except: (1) by law enforcement officers; and (2) to transport lawful firearms across the Common Property to or from a Lot. The term "firearms" includes, but is not limited to, any device which will or can be converted to expel a projectile by the action of an explosive or electrical charge or by the action of compressed air. Examples of "firearms" as described in this section include, but are not limited to, handguns, rifles, shotguns, stun guns, tasers, "B-B" guns, pellet guns and paintball guns. Additionally, cross-bows and arrows shall be considered a "firearm" pursuant to this Declaration.

F. Pets

No Owner or Occupant may keep any animals other than a reasonable number of generally recognized household pets in the Community, as determined in the sole discretion of the Board of Directors. No Owner or Occupant may keep, breed or maintain any pet for any commercial purpose in the Community. 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 that are not fully enclosed by a fence. Feces left by pets on the Common Property or on any Lot must be removed promptly by the owner of the pet or the person responsible for the pet.

No potbellied pigs are permitted in the Community. No animals that the Board determines to be dangerous may be brought onto or kept in the Community. If the Board determines that an Owner's or Occupant's pet endangers any person or other pet or creates a nuisance or unreasonable disturbance in the Community, the Board may require that the pet be permanently removed from the Community upon seven days' written notice to such Owner or Occupant. 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. Notwithstanding the above, the Board may remove any pet without prior notice to the pet's owner if, in the Board's sole discretion, the pet presents an immediate danger to health, safety or property in the Community.

Any Owner or Occupant who keeps or maintains any pet in the Community agrees to indemnify and hereby holds harmless the Association, its Directors, Officers, and agents, from any loss, damage, claim or liability of any kind or character whatsoever related to such pet. The Board may establish additional rules regarding pets in the Community, which may include restrictions on the breeds, number and/or size of permitted pets.

G. Parking

No Owner or Occupant may keep or bring into the Community more than a reasonable number of vehicles per Lot, as determined in the sole discretion of the Board of Directors. Vehicles only may be parked in garages, driveways on Lots, designated parking spaces serving the Lots, or other areas authorized in writing by the Board. Vehicles may not be parked on any grass or landscaped areas on Lots; neither shall any vehicles be parked on Common Property or in the "Private Alley" area as described on the recorded plat of survey for Old Suwanee.

Owners shall utilize their garage for all of their vehicles before using their driveways. Any vehicle parked in a driveway serving a Lot shall be parked parallel and at least three-fourths of the vehicle must be on the driveway serving the Lot. Such vehicle must not block access to neighboring Lots, or cause damage to sidewalks and/or buildings.

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

Boats, jet-skis, trailers, buses, taxis, hearses, limousines, recreational vehicles, motor homes, campers, panel trucks, trucks with a cargo-load capacity of one ton or more, full-size vans (excluding vans used by handicapped persons, mini-vans or sport utility vehicles used as passenger vehicles and receiving

a "car" or "passenger vehicle" classification by the Georgia Department of Motor Vehicles), vehicles containing visible evidence of commercial use (such as tool boxes, tool racks, ladders, ladder racks or tow winches), and vehicles with commercial writings on their exteriors (except for law enforcement vehicles marked as such) are also prohibited from being parked in the Community, except: (1) in garages or as otherwise approved by the Board; or (2), in the case of service vehicles, on a temporary basis during daytime business hours or during emergencies for the purpose of serving a Lot. The Board may establish additional rules regarding vehicles and parking in the Community, which may include restrictions on the number of vehicles which may be parked in the Community, and the designation, reservation and/or assignment of certain parking areas within Old Suwanee for Owner use subject to certain fees and/or classifications related to Lots.

If any vehicle is parked in the Community in violation of this Paragraph or the Association's rules, the Board or agent of the Association may tow or boot the vehicle after 24 hours written notice. Such notice shall: (1) be placed on the vehicle; (2) specify the nature of the violation; (3) warn of possible towing or booting; and (4) state the name and telephone number of a person to contact regarding the violation. If 24 hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six months of such notice, the Board or agent of the Association may have the vehicle towed or booted in accordance with the original notice and without further notice. 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, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed or booted immediately.

The Association has no liability for any towing or booting in accordance with this subparagraph. Each Owner and Occupant hereby releases and holds harmless the Association, its Directors, Officers, agents and representatives, for any claim or damage from any such towing or booting. 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.

H. Signs

Except as may be provided for herein or as may be required by legal proceedings or any governmental construction permitting process, no signs, advertising posters, political placards or billboards of any kind shall be erected, placed, or permitted to remain in the Community without the prior written consent of the Board of Directors or ACC, other than: (1) two professional security signs not to exceed six inches by six inches each in size displayed on a Lot; (2) one professionally lettered "For Sale" or "For Lease" sign not to exceed 24" by 30" in size displayed on a Lot being offered for sale; and (3) three professionally lettered political candidate endorsement placards not to exceed 24" by 30" in size displayed on a Lot from 30 days before an election to five days after such election. The Board may establish rules permitting temporary signs on Lots announcing open houses, births, birthdays or other events for limited periods of time. The Board shall have the right to erect signs on the Common Property.

I. Rubbish and Trash

Owners and Occupants shall regularly remove all rubbish and trash from the Lot. No rubbish or trash shall be placed on the Common Property, except as provided herein. Rubbish and trash shall be disposed of in appropriate sealed bags and placed in proper receptacles for collection. The Board may establish additional rules regarding placement of trash cans for pick-up and/or storage. The Association shall pay for residential trash pick-up service for all Lots. No Owner shall schedule or pay for trash pick-up for an individual Lot.

J. Unightly or Unkempt Conditions

Owners and Occupants are prohibited from engaging in activities which cause disorderly, unsightly or unkempt conditions on the Common Property or outside of a dwelling in the Community, such as the assembly and disassembly of motor vehicles and other mechanical devices. 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, potted plants, patio furniture and grills may

be kept outside the dwelling on any Lot. Owners and Occupants shall maintain such items in a neat and attractive condition, as determined in the Board's sole discretion.

K. Drainage

Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. Each Owner and Occupant shall ensure that any drainage grating and/or headwalls on the Owner's Lot are clear of obstruction and debris. Furthermore, no Owner or Occupant may obstruct or rechannel the drainage flows across the Owner's Lot.

L. Erosion Control; Contamination

No Owner or Occupant shall engage in any activity which creates erosion or siltation problems or causes contamination of or damage to any stream, water course or any other Lot in the Community. Each Owner and Occupant shall be liable for all damages and restoration costs resulting from such unauthorized activity.

M. Impairment of Easements

No Owner or Occupant shall impair any easement existing in the Community, or do any act or allow any condition to exist which will adversely affect the other Lots or their Owners or Occupants.

N. Sight Distance at Intersections

All property located at street intersections shall be landscaped and kept so as to permit safe sight across the street corners. No vehicle, fence, wall, hedge, shrub, tree or other landscaping shall be placed or permitted to remain where it would create a traffic or sight problem.

O. Mailboxes

Only one mailbox may be located on each Lot. The Owner shall replace or restore any destroyed or damaged mailbox on the Lot. All mailboxes shall be maintained in good condition and in the style and color originally installed, specified or approved by the Association. Replacement or rebuilt mailboxes shall be in the same style and color as the original except as deviations from the original may be approved by the ACC. The Board may establish mailbox standards and require reasonable modifications or upgrades to mailboxes and mailbox posts to meet revised community standards.

P. Yard Sales

No yard sale, garage sale, flea market or similar activity shall be conducted in the Community without the prior written consent of the Board of Directors and subject to all reasonable conditions that the Board may impose. However, Owners and Occupants may conduct estate sales or similar sales entirely within their dwellings not more than once in any 12 month period.

Q. Garages

If garage space is available, Owners and Occupants should park their cars and other motor vehicles in the garage before parking in the driveway. Garage doors also should remain closed when not in use for ingress, egress or garage use, or when the Owner or Occupant is not outside on the Lot. Garage conversions are prohibited; provided, however, that all garage conversions in existence on the Effective Date, and made in compliance with all of the terms of the Original Declaration, shall not constitute a violation of this requirement. The Board may establish additional rules regarding garages.

R. Window Treatments

Unless otherwise approved in writing by the Board of Directors, all windows on a dwelling on a Lot which are exposed to a street or another dwelling shall have customary and appropriate window treatments. No foil or other reflective materials shall be used on any windows for sunscreens, blinds, shades or other purposes. All shades, drapery linings, or other window treatments visible from the exterior of the dwelling

on any window or door shall be white or off-white. The Board may establish additional rules regarding window treatments, such as requirements for the location, type and exterior color of window treatments.

S. Antennas and Satellite Dishes

Except as provided below or otherwise approved by the Board of Directors, 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 in any portion of the Community. Direct broadcast satellite ("DBS") antennas and multi-channel multi-point distribution services ("MMDS") one meter or less in diameter and television broadcast service antennas may be installed in accordance with rules and regulations of the Federal Communication Commission ("FCC") and the Association. Any such devices shall be installed in the least conspicuous location available on the Lot that permits reception of an acceptable quality signal.

T. Recreational Equipment

Recreational and playground equipment shall be placed or installed only upon the rear of a Lot as approved by the ACC. Basketball goals may be affixed to the house above the garage, but shall be painted to match the house. No above or below ground pool shall be allowed. Any outdoor hot tub, Jacuzzi, or similar equipment shall be kept screened by adequate planting or fencing so as to conceal it from view by neighboring residences and streets, and may be maintained in the rear yard on a Lot only.

10. LEASING AND OCCUPANCY

To preserve the character of the Community as predominantly owner-occupied, the Leasing of Lots is prohibited, except as provided herein. "Leasing" means the occupancy of a Lot by any person(s) other than: (1) the Owner or a parent, child or spouse of an Owner (collectively referred to as "Authorized Occupant"); (2) an Authorized Corporate Occupant (defined below); or (3) a roommate of an Authorized Occupant or Authorized Corporate Occupant, when the Authorized Occupant or Authorized Corporate Occupant also occupies the Lot as his or her primary residence. An Authorized Corporate Occupant shall be an officer, director, shareholder, member or employee of an Owner that is a corporation; a manager or member of an Owner that is a limited liability company; a partner of an Owner that is a partnership; or a trustee or beneficiary of an Owner that is a trust; provided the Owner receives no rent or other consideration for such occupancy. The name of each Authorized Corporate Occupant shall be designated in writing to the Board and may not be changed more frequently than once every 12 months without the Board's written consent. A person's designation as an Authorized Corporate Occupant shall terminate automatically upon the termination of such person's relationship with the entity holding record title to the Lot.

A. Permitted Leasing

Leasing of Lots is allowed only by: (1) a Grandfathered Owner; (2) a non-Grandfathered Owner who has received a Leasing Permit as provided below; (3) a non-Grandfathered Owner who has received a Hardship Permit as provided below; or (4) the Association. Leasing Permits and Hardship 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 such permit was issued to the Owner's predecessor-in-title).

(1) Leasing Permits.

The Board of Directors shall approve an Owner's request for a Leasing Permit if the total number of current, outstanding Leasing Permits plus Grandfathered Lots is less than 20% of the total number of Lots within the Community provided, however, a Leasing Permit shall not be issued to any Owner if the Lot is shown on the Association's books and records to be more than 30 days past due in any assessment or charge, if the Owner is in violation of the Association Legal Documents or if the Owner fails to submit an executed lawn service contract to the Board of Directors, as described below. Owners who have been denied a Leasing Permit shall be placed on a waiting list to be issued such a permit, if they so desire, when the above conditions have been satisfied. 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.

(2) Hardship Permits.

If the inability to lease will result in an undue hardship to the Owner, then the Owner may seek to lease on a hardship basis for a term not to exceed one year, by applying to the Board of Directors for a Hardship Permit. The Board may approve or deny an Owner's request for a Hardship Permit 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 Community if such permit is issued; (3) the number of outstanding Hardship Permits; (4) the Owner's ability to cure the hardship; and (5) whether previous Hardship Permits have been issued to such Owner; provided, however, a Hardship Permit shall not be issued to any Owner if the Lot is shown on the Association's books and records to be more than 30 days past due in any assessment or charge, if the Owner is in violation of the Association Legal Documents or if the Owner fails to submit an executed lawn service contract to the Board of Directors, as described below.

A "hardship" as described herein shall include, but not be limited to, the following situations: (1) when the Board determines that an Owner must relocate his or her residence outside the greater Atlanta metropolitan area and cannot, within six 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; (2) when the Board determines that an Owner must temporarily relocate out of the metropolitan-Atlanta area for employment purposes and intends to return to reside in the Lot within one year; or (3) an Owner dies and the Lot is being administered by his or her estate.

Unless otherwise determined by the Board, a Hardship Permit authorizes an Owner to lease the Lot once for a term not to exceed one year.

(3) Expiration and Revocation of Permits.

Leasing Permits and Hardship Permits are automatically revoked upon: (1) the sale or transfer of the Lot to a third party (excluding sales or transfers to an Owner's spouse); (2) the failure of an Owner to lease his or her Lot for 90 consecutive days at any time after the issuance of such permit; or (3) the occupancy of the Lot by the Owner. The board also shall have the power to revoke any Leasing Permit or Hardship Permit issued to any Owner if the Lot is shown on the Association's books and records to be more than 30 days past due in any assessment or charge, if the Owner is in violation of the Association Legal Documents or if the lawn service contract, as described below expires.

A Hardship Permit shall be revoked automatically if, during the term of such permit, the Owner is approved for and receives a Leasing Permit. An Owner may apply for an additional Hardship Permit at the expiration of a previous one.

B. General Leasing Provisions**(1) Notice and Approval.**

All leases shall be in writing and in a form approved by the Board of Directors prior to the effective date of the lease. At least seven days before entering into a lease, the Owner shall provide the Board with: (1) a copy of the proposed lease; (2) the names, phone numbers, work locations and work phone numbers of all of the proposed Occupants of the Lot; (3) the Owner's primary residence address and phone number, work location and work phone number; and (4) such other information required by the Board. If the form of a lease is disapproved, the Board shall notify the Owner what changes are required to bring the lease into compliance with the Association Legal Documents. Nothing herein gives the Board the right to approve or disapprove a proposed Occupant; the Board's approval or disapproval shall be limited to the form of the proposed Occupant. Within 10 days after executing a lease for a Lot, the Owner shall provide the Board with a copy of the executed lease.

(2) Lease Terms.

Lots may be leased only in their entirety; no rooms or fractions of Lots may be leased without prior written Board approval. 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 year, except with written Board approval.

(3) Lawn Service.

To ensure appropriate maintenance of the Lot in accordance with the Declaration, and for the benefit of the Association, the Owner or Occupant is required to maintain a professional lawn service during the entire term of the lease or occupancy relationship, unless such requirement is waived by the Board of Directors in writing. The professional lawn service company shall provide all fertilizing and weeding of lawns and all pruning, repair and maintenance of bushes, shrubs, trees and other landscaping on the Lot, as is necessary to keep such lawn and landscaping maintained in a condition which meets the standards for the community established by the Association's Board of Directors. A copy of the executed lawn service contract must be provided to the Board at the same time that a copy of the executed lease is submitted to the Board by the Owner.

(4) Liability for Assessments; Compliance.

The Owner must provide the Occupant copies of the Association Legal Documents. The following provisions are incorporated into each lease of any Lot, whether or not expressly stated therein, and into the terms of any tenancy or occupancy even if no written lease or agreement exists between the Owner and the Occupant:

(a) Compliance with Association Legal Documents.

All terms defined in the Declaration of Protective Covenants and Easements for Old Suwanee are incorporated herein by this reference. The Owner and each Occupant shall comply with all provisions of the Association Legal Documents. The Owner and Occupants are responsible for violations by any guests of the Lot and may be sanctioned for any such violation.

If a Lot is leased or occupied in violation of the Association Legal Documents, or if the Owner, Occupant or guest violates the Association Legal Documents, the Association's Board of Directors shall be authorized to take all enforcement actions against the Owner and/or Occupant authorized under the Association Legal Documents.

(b) Common Property.

The Owner transfers and assigns to the Occupant, for the term of the lease, all rights and privileges the Owner has to use any recreational facilities on the Common Property.

(c) Liability for Assessments.

When an Owner who is leasing his or her Lot fails to pay an assessment or any other charge to the Association when due, the delinquent Owner hereby consents to the assignment of any rent received from the Occupant during the period of the delinquency. In such case, upon request by the Board, the Occupant shall pay to the Association all unpaid assessments and other charges payable during and prior to the term of the lease and any other period of occupancy. However, the Occupant 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 the Occupant shall reduce, by the same amount, the Occupant's obligation to make monthly rental payments to the Owner. If the Occupant fails to comply with the Board's request to pay assessments or other charges, such failure shall be deemed a violation of the Declaration and, in addition to all other enforcement rights, the Occupant shall pay to the Association all amounts authorized under the Declaration as if the Occupant were the Owner of the Lot. 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.

C. Enforcement

If a Lot is leased or occupied in violation of the Association Legal Documents, or if the Owner, Occupant or guest violates the Association Legal Documents, such violation is deemed to be a default under the terms of any lease or occupancy and the Association may require the Owner to evict the Occupants. In addition to all other remedies permitted by this Declaration, such default authorizes the Owner and/or the Association, as the Owner's delegate and attorney-in-fact, to terminate the lease and/or occupancy and to evict all Occupants, without liability, in accordance with Georgia law. In any such eviction action by the Association, the Association may terminate the Occupancy rights upon 15 days notice, notwithstanding any notice requirement in the lease or occupancy terms. Once the Association invokes its right to terminate the lease or occupancy and evict the Occupant(s), the Owner no longer has the right to extend or revive the terminated occupancy in any way.

11. SALE OF LOTS

An Owner intending to transfer or sell a Lot or any interest in a Lot shall give the Board of Directors written notice of such intention within seven days after executing the transfer or sales documents. As part of the notice, the current Owner shall furnish the Board the name and address of the intended grantee and such other information required by the Board. This Paragraph shall not be construed to create a right of first refusal in the Association or in any third party.

Within seven days after receiving title to a Lot, the purchaser or grantee of the Lot shall give the Board written notice of his or her ownership of the Lot. As part of the notice, the new Owner shall furnish the Owner's name, mailing address and such other information required by the Board.

12. INSURANCE

A. Hazard Insurance on Common Property

The Board of Directors shall obtain hazard insurance for all insurable improvements on the Common Property. This insurance shall include, at a minimum, coverage for fire, wind, storm, hail, vandalism, malicious mischief and civil commotion and shall be in an amount sufficient to cover the full replacement cost of such insurable improvements. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

B. Association Liability Insurance

The Board shall obtain a public liability policy applicable to the Common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, in their capacities as such, with a combined single limit of at least \$1,000,000.00.

C. Directors' and Officers' Liability Insurance

The Board shall obtain a Directors' and Officers' liability insurance policy with a limit of at least \$1,000,000.00.

D. Fidelity Insurance

The Board shall obtain a fidelity bond or dishonesty insurance on Directors, Officers, employees, and other persons handling or responsible for the Association's funds, regardless of whether they are compensated by the Association. If reasonably available, the fidelity bond or dishonesty insurance shall cover at least one-quarter of the annual assessments from all members plus the reserve funds in the custody of the Association at any time during the term of the bond or policy. The bond or policy must provide that it may not be canceled, substantially modified or subject to non-renewal without at least 30-days prior written notice to the Association.

E. Additional Association Insurance

The Board may obtain such additional insurance as it deems appropriate.

F. Premiums and Deductibles on Association Policies

Premiums for all Association insurance shall be a Common Expense. The policies may contain reasonable deductibles. Deductibles shall not be subtracted from the face amount of the policies in determining whether the insurance equals the full replacement cost of the insurable improvements.

G. General Insurance Provisions

In addition to any other terms the Board deems appropriate, all Association insurance shall be governed by the following provisions:

- (1) All policies shall be written with a company licensed to do business in Georgia;
- (2) All policies on the Common Property shall be in the name of the Association for the benefit of itself and its members;
- (3) The Board shall have exclusive authority to adjust losses under all Association insurance policies;
- (4) The insurance carried by the Association shall be primary and shall not be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees;
- (5) All hazard insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if reasonably available; and
- (6) A qualified person who is in the real estate industry and familiar with construction in the county where the Community is located shall review the Association's hazard insurance policy at least bi-annually to evaluate the sufficiency of such coverage.

H. Individual Lot Owner Insurance

Each Owner shall carry hazard insurance on the Owner's Lot and the structures thereon meeting the same requirements as set forth in subparagraphs (A), (F), (G)(1) and (G)(5) of this Paragraph for insurance on the Common Property.

13. REPAIR AND RECONSTRUCTION AFTER CASUALTY DAMAGE**A. Common Property**

In the event of damage to or destruction of any structure on the Common Property, the Board of Directors shall arrange for and supervise the prompt repair or reconstruction of such structure, with such improvements or modifications it deems appropriate, unless 80% of the Owners vote not to do so.

(1) Construction Fund.

Any insurance proceeds collected on a claim against any Association hazard policy and any special assessments collected pursuant to subparagraph (2) below shall constitute a construction fund to be used by the Board for repair or restoration pursuant to this Paragraph.

(2) Proceeds.

If the proceeds of insurance are not sufficient to defray the Board's estimated or actual costs of repair or reconstruction, including, but not limited to, any professional fees and premiums for construction bonds the Board deems necessary, the Board may levy a special assessment against all Owners without the necessity of a membership vote or compliance with any other requirements for approval of special assessments in this Declaration. Any surplus funds remaining after the repair or reconstruction is completed shall be common funds of the Association to be used as determined by the Board.

B. Lots

In the event of damage to or destruction of any structure on a Lot, the Owner shall either: (1) within 180 days, repair or reconstruct such structure in accordance with plans and specifications approved by the ACC; or (2) within 60 days, clear the Lot of all debris and sod or landscape all portions of the Lot as approved by the ACC.

14. EMINENT DOMAIN

Whenever any Common Property is taken by, or conveyed in lieu of condemnation to, any authority having condemnation or eminent domain power, the Board of Directors shall give notice thereof to each Owner. If any structure on the Common Property is so taken or conveyed, the Board shall arrange for and supervise the prompt reconstruction of such structure, to the extent sufficient Common Property is available, with such improvements or modifications it deems appropriate, unless 80% of the Owners vote not to do so.

If proceeds from the condemning authority are not sufficient to defray the Board's estimated or actual costs of reconstruction, including, but not limited to, any professional fees and premiums for construction bonds the Board deems necessary, the Board may levy a special assessment against all Owners without the necessity of a membership vote or compliance with any other requirements for approval of special assessments in this Declaration. Any surplus funds remaining after the reconstruction is completed shall be common funds of the Association to be used as determined by the Board.

15. EASEMENTS

A. Easements for Use and Enjoyment

Every Owner 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 Association's right to:

- (1) charge reasonable admission and other fees for the use of any portion of the Common Property;
- (2) limit the number of Owners' guests who may use the Common Property;
- (3) provide for the exclusive use and enjoyment of specific portions of the Common Property at certain designated times by an Owner;

(4) suspend Owners' rights to use the Common Property as set forth in this Declaration;

(5) borrow money as provided in the Bylaws, subject to the rights, interests, easements and privileges of the Owners set forth in this Declaration;

(6) grant permits, licenses or easements across the Common Property; and

(7) dedicate or transfer all or any portion of the Common Property as provided in the Bylaws.

The Owners' rights and easements granted in this Paragraph are subject to: (1) all other rights of the Association and other Owners set forth in this Declaration, the Bylaws or the Articles of Incorporation; and (2) all encumbrances and other matters of public record affecting title to the Common Property.

B. Easements for Utilities

There is hereby reserved to the Association, or its designee, blanket easements upon, across, above and under all property within the Community for access, ingress, egress, installation, repair, replacement, and maintenance of: (a) gas, water, sanitary sewer and electricity services and all other utilities serving any portion of the Community; (b) any water runoff and storm drainage systems; and (c) any other services such as, but not limited to, any telephone and telecommunication systems, master television antenna system, cable television system or security system serving the Community. The Board of Directors has the right to grant a specific license or easement by separate recordable document to any party furnishing such utilities or services.

C. Easement for Entry.

There is hereby reserved to the Association and its designee, an easement and right, but not the obligation, to enter onto any Lot for emergency, life-safety, security and safety. The 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. No one exercising the easement and rights granted in this Paragraph shall be liable for trespass, damages, or in any other manner by virtue of exercising such rights. The failure to exercise the rights herein or to exercise said rights in a timely manner shall not create liability to any of the above-referenced parties, it being agreed that no duty to enter a Lot shall exist.

D. Easement for Association Maintenance.

There is hereby reserved to the Association and its designee, an easement and right across all portions of the Community, to allow the Association to fulfill the maintenance obligations described in this Declaration. This easement shall be exercised with a minimum of interference to the quiet enjoyment of the Owner's property, reasonable steps shall be taken to protect the Owner's property, and any Person causing damage to the Owner's property shall repair the damage at its sole expense.

E. Easements for Owners' Maintenance and Repair.

There is hereby created reciprocal appurtenant easements over and upon adjacent Lots for the purpose of maintaining or repairing the improvements and landscaping on each Lot. This easement shall extend into each Lot not more than five feet from any point on the common boundary line between the Lots. Owners may exercise this easement only for the reasonable period of time necessary to complete the needed maintenance or repair. The Owner exercising this easement right shall be liable for the prompt

repair of any damage such Owner caused to the Lot over which this easement is exercised. The damaged portions of such Lot shall be restored to substantially the same condition that existed prior to the damage.

F. Easement for Street Signs.

There is hereby reserved to the Association and its designee, an easement and right across all portions of the Community for ingress to, egress from, installation, construction, landscaping and maintenance of street signs for the Community. This easement right shall include, but not be limited to, the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around all street signs.

G. Easement for Entry Features.

There is hereby reserved to the Association and its designee, an easement and right over and upon each Lot which is bounded by the right-of-way providing primary access to the Community and every other Lot located at the corner of a street intersection in the Community for ingress to, egress from, installation, construction, landscaping and maintenance of entry features and similar streetscapes for the Community. This easement right shall include, but not be limited to, the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around the entry features and the right to grade the land under and around the entry features. Owners shall not alter, remove or add improvements to any entry features on any Lot, or any part of any easement area associated therewith without the prior written consent of the Board of Directors.

H. Public in General.

The easements and rights created in this Paragraph do not, are not intended to, and shall not be construed to create any easements or rights in or for the benefit of the general public; provided, however, nothing set forth herein shall in any way limit or restrict any easements or rights already granted to the public as such easements or rights are previously recorded in the Gwinnett County, Georgia land records. The Board of Directors hereby reserves the right to close temporarily, all or any portion of the Community that, in the reasonable opinion of the Board, may be legally necessary to prevent a dedication of such property, or the accrual of any rights to such property, to the general public or to any Person other than the Persons for which such easements are expressly created in this Declaration.

16. AUTHORITY AND ENFORCEMENT

A. Compliance with Association Legal Documents

All Owners, Occupants and their guests shall comply with the Association Legal Documents. The Association, and in an appropriate case, one or more aggrieved Owners, may take action to enforce the terms of the Association Legal Documents directly against all Violators. However, if an Owner's family member, guest or Occupant violates the Association Legal Documents, the Association, in its sole discretion, is permitted to enforce the terms of the Association Legal Documents against: (1) only the Owner; (2) only the violating family member, guest or Occupant; or (3) both the Owner and the violating family member, guest or Occupant. Notwithstanding anything herein to the contrary, the Owner of the Lot is always ultimately responsible for his or her own actions and the actions of all family members, Occupants and guests of such Lot.

Nothing herein shall be construed to affect the rights of an aggrieved Owner or Occupant to proceed independently for relief from interference with his or her personal or property rights against a Person violating the Association Legal Documents. The Board of Directors may, in its discretion, require the aggrieved Owner or Occupant to independently pursue all available remedies under Georgia law against the Violator before the Association intervenes and commences enforcement action against such Violator.

B. Types of Enforcement Actions

In the event of a violation of the Association Legal Documents, the Association shall have the power to take any or all of the following actions separately or simultaneously; provided, however, all suspensions and fines shall comply with the procedures described below and nothing herein shall authorize the Association or the Board to deny ingress and egress to or from a Lot:

- (1) Suspend all Violators' rights to use the Common Property;
- (2) Suspend the voting rights of a violating Owner;
- (3) Impose reasonable fines against all Violators, which shall constitute a lien on the violating Owner's Lot;
- (4) Use self-help to remedy the violation;
- (5) Bring an action for permanent injunction, temporary injunction and/or specific performance to compel the Violator to cease and/or correct the violation; and
- (6) Record in the Gwinnett County land records a notice of violation identifying any uncured violation of the Association Legal Documents regarding the Lot.

C. Suspension and Fining Procedure

Except as provided below, before imposing fines or suspending right to use the Common Property or the right to vote, the Association shall give a written violation notice to the Violator as provided below.

(1) Violation Notice

The written violation notice to the Violator shall:

- (a) Identify the violation, suspension(s) and/or fine(s) being imposed; and
- (b) Advise the Violator of the right to request a violation hearing before the Board of Directors to contest the violation or request reconsideration suspension(s) or the fine(s).

Notwithstanding the Violator's right to request a violation hearing, suspension(s) and/or fine(s) shall commence on the date of the written violation notice, unless a later date is specified in such notice.

(2) Violation Hearing

If the Violator submits a written request for a violation hearing within 10 days of the date of the violation notice described above, then the Board of Directors shall schedule and hold, in executive session, a violation hearing. If a Violator fails to timely request a violation hearing, such Violator loses the right to contest the violation and request reconsideration of the suspension(s) and/or the fine(s). If a Violator timely requests a violation hearing, the Violator shall have a reasonable opportunity to address the Board regarding the violation; provided, however, the Board may establish rules of conduct for the violation hearing, including but not limited to, limits on the amount of time one person can speak and limits on the number of participants who may be present at one time. The minutes of the violation hearing shall contain a written statement of the results of such hearing.

(3) No Violation Notice and Hearing Required

No violation notice or violation hearing shall be required to:

- (a) impose late charges on delinquent assessments;
- (b) suspend a violating Owner's voting rights if the Violator's Lot is shown on the Association's books and records to be more than 30 days past due in any assessment or charge, in which case suspension of the violating Owner's right to vote shall be automatic and shall continue until the violation no longer exists or the Board of Directors otherwise reinstates such rights in writing;
- (c) suspend a Violator's right to use the Common Property if the Violator's Lot is shown on the Association's books and records to be more than 30 days past due in any

assessment or charge, in which case suspension of the Violator's right to use the Common Property shall be automatic (which shall allow the Association to tow and/or boot a Violator's vehicle located on the Common Property without complying with the Suspension and Fining Procedures described above);

(d) Engage in self-help in an emergency;

(e) Impose fines for each day of a continuing violation, in which case, each day the violation continues or occurs again constitutes a separate violation and fine(s) may be imposed on a per diem basis without any further notice to the Violator; or

(f) impose fines if the same violation occurs again on the same Lot, in which case fine(s) may be imposed on a per diem basis without any further notice to the Violator.

D. Self-Help

In addition to all other enforcement rights granted herein, the Board of Directors may elect to enforce any provision of the Association Legal Documents by self-help without the necessity for compliance with the Suspension and Fining Procedures described above.

By way of example and not limitation, the Association or its duly authorized agent shall have the authority to tow vehicles that are in violation of parking regulations and enter a Lot or any portion of the Common Property to abate or remove any structure, thing or condition that violates the Association Legal Documents. Unless an emergency exists, before exercising self-help, the Association shall give the Violator at least two days prior written notice. Such notice shall request that the Violator remove and abate the violation and restore the Lot to substantially the same condition that existed prior to the structure, thing or condition being placed on the Lot and causing the violation. Such removal, abatement and restoration shall be accomplished at the Violator's sole cost and expense. If the same violation occurs again on the same Lot, the Association may exercise self-help without any further notice to the Violator.

E. Injunctions and Other Suits at Law or in Equity

All Owners agree and acknowledge that there may not be adequate remedies at law to enforce the Association Legal Documents. Therefore, in addition to all other enforcement rights granted herein, the Association is hereby entitled to bring an action for permanent injunction, temporary injunction and/or specific performance to compel a Violator to cease and desist and/or correct any violation.

F. Costs and Attorney's Fees for Enforcement Actions

In any action taken by the Association to enforce the Association Legal Documents, the Association shall be entitled to recover from the Violator, any and all costs incurred by the Association, including but not limited to attorneys' fees actually incurred, all of which shall constitute a lien against the violating Owner's Lot.

G. Failure to Enforce

The Board of Directors has the sole discretion to decide which, if any, enforcement action to pursue against each Violator. The failure of the Board to enforce any provision of the Association Legal Documents shall not be deemed a waiver of the right of the Board to do so thereafter. No right of action shall exist against the Association for failure to enforce if the Board of Directors determines that:

(1) the Association's position is not strong enough to justify taking enforcement action;

(2) a particular violation is not of such a material nature as to be objectionable to a reasonable person;

(3) a particular violation is not of such a material nature to justify the expense and resources to pursue or continue to pursue enforcement action;

(4) the aggrieved Owner or Occupant asserting a failure of enforcement has not independently pursued all available individual remedies under Georgia law; or

(5) the Association enforces only against an Owner for the violation of the Owner's family member, guest or Occupant or the Association does not enforce against the Owner and enforces only against the violating family member, guest or Occupant.

17. **AMENDMENTS**

A. Member Approval Procedure

Except where a higher vote is required for action under any other provisions of this Declaration, the Bylaws or by the Act, this Declaration may be amended with the approval of Owners holding 2/3 of the total Association vote. Notice of a meeting, if any, at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. No amendment shall be effective until certified by the President and Secretary of the Association and recorded in the Gwinnett County, Georgia land records.

B. Default Approval Procedure After Owner Non-Response

It is recognized that, when Owners fail to participate in an amendment vote because of apathy or other reasons which are not based on any disagreement with a proposed amendment, important amendments to the Declaration may have no chance of approval, with the supermajority voting requirements established under the Act. It also is recognized that supermajority voting requirements are important for Owner actions which are as significant as amending this Declaration. To balance these competing concerns, this subparagraph establishes a mechanism which provides every eligible Owner an opportunity to issue a vote of approval, disapproval or abstention on proposed amendments to the Declaration, but also a realistic mechanism for approving important amendments, without the damaging consequences of Owner non-response.

The Board shall issue notice of all proposed amendments to each Owner. With each such notice, the Board shall include a copy of the proposed amendment, along with a consent form or ballot, which complies with the requirements of the Bylaws. Each such consent form or ballot shall give Owners an opportunity to vote for, vote against or abstain from voting on the proposed amendment.

If the amendment is not approved or defeated by sufficient vote within 60 days of the amendment notice described above, then the Board may seek to obtain default approval from Owners under this subparagraph. In such case, the Board shall send default approval notice, by certified mail and to the address consistent with the notice provision of the Bylaws, to all Owners who have not returned consents or ballots on a proposed amendment within that 60-day period. This default approval notice also shall include a consent form or ballot, as provided above, along with a statement that the Owner's failure to return an executed consent form or ballot, marked with a vote for, a vote against, or an abstention from voting on the amendment, within 30 days of the date of such default approval notice, will be deemed consent to such amendment. If the Board does not receive such consent or ballot within that 30-day period, the Owner shall be deemed to have consented to and approved the amendment.

C. Eligible Mortgage Holder Approval

In addition to approval by the Owners as provided above, material amendments to this Declaration and the Bylaws must be approved by Eligible Mortgage Holders who represent at least 51% 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 30 days after the Eligible Mortgage Holder receives notice of the proposed amendment sent by certified or registered mail, return receipt requested.

D. Amendments to Comply with Law or Conform Documents

Notwithstanding the foregoing, the Board of Directors, without the necessity of a vote from the Owners, may amend this Declaration and the Bylaws to comply with any applicable state, city or federal law, including but not limited to, compliance with applicable guidelines of the Federal National Mortgage Association ("Fannie Mae"), Federal Home Loan Mortgage Corporation ("Freddie Mac"), the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA"), or to resolve conflicts between this Declaration, the Bylaws, the Articles, and applicable laws.

E. Validity of Amendments

No Person shall be permitted to bring any legal action to challenge the validity of an amendment to this Declaration or the Bylaws more than one year after the recording thereof in the Gwinnett County, Georgia land records.

18. GENERAL PROVISIONS**A. Security**

The Association may, but shall not be required to, provide measures or take actions which directly or indirectly improve security in the Community. Each Owner, for himself or herself and his or her Occupants, tenants, guests, licensees, and invitees, acknowledges and agrees that the Association is not a provider of security. The Association has no duty to provide security in the Community. Furthermore, the Association does not guarantee that Owners, Occupants and other people will not commit criminal acts in the Community or that unauthorized people will not gain access to the Community. It shall be the responsibility of each Owner to protect his or her person and property, and all responsibility to provide such security shall lie solely with each Owner. The Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of measures undertaken.

B. Dispute Resolution

Before filing any lawsuit or administrative proceeding against the Association, the Board of Directors, any Officer or Director, or the Association's property manager, an Owner or Occupant shall request in writing and attend a meeting with the Board to discuss an amicable resolution of any dispute. The Owner or Occupant shall, in such request and at the meeting, make a good faith effort to explain the grievance and resolve the dispute. Upon receiving a request for a meeting, the Board shall give notice of the date, time and place of the meeting to the person requesting the meeting. The Board shall schedule this meeting for a date not less than seven or more than 30 days from the date of receipt of the meeting request, except with the approval of the Owner or Occupant. After the meeting, the Board shall have a reasonable opportunity to address the Owner's or Occupant's grievance before a suit is filed.

C. 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.

D. Implied Rights

In addition to express rights, the Association may exercise any right or privilege implied from the existence of any express right or privilege or reasonably necessary to effectuate any such right or privilege.

E. 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.

F. Use of Words "Old Suwanee"

"Old Suwanee" is a service mark of the Association. No person shall use the term "Old Suwanee" or any derivative in any printed or promotional material without the Association's prior written consent. However, Owners may use the terms "Old Suwanee"sm in printed or promotional matter where such term is used solely to specify that particular property is located within the Community. Any use of the name "Old Suwanee"sm shall be in a manner in which proprietary rights to such name are protected.

G. Preamble

The preambles and recitals of this Declaration are by reference made a part of this document as if fully stated herein in their entirety.

H. Duration

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

I. Severability

Invalidation of any one of these covenants or restrictions, by judgment, 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.

19. PREPARER

This Declaration was prepared by Tanya Fairclough-James, Weissman, Nowack, Curry & Wilco, P.C., One Alliance Center, 4th Floor, 3500 Lenox Road, Atlanta, Georgia 30326.

IN WITNESS WHEREOF, the undersigned Officers of Old Suwanee Homeowners Association, Inc., hereby certify that the above amendment to the Original Declaration and the following amendment to the Original Bylaws were duly adopted by the required majority of the Association and its membership, with any required notices duly given.

This 15th day of November, 2010.

Sworn to and subscribed to before me this 15th day of Nov., 2010.

[Signature]
Witness
[Signature]
Notary Public
[Notary Seal]

OLD SUWANEE HOMEOWNERS ASSOCIATION, INC.

By: [Signature] (Seal)
President
Attest: [Signature] (Seal)
Secretary

