

TABLE OF CONTENTS

	<u>PAGE</u>
ARTICLE 1 DEFINITIONS .....	Page 2
1.1 <u>Association</u> .....	Page 2
1.2 <u>Board</u> .....	Page 2
1.3 <u>By-Laws</u> .....	Page 2
1.4 <u>Declarant</u> .....	Page 2
1.5 <u>Development</u> .....	Page 2
1.6 <u>Lot</u> .....	Page 2
1.7 <u>Member</u> .....	Page 2
1.8 <u>Membership</u> .....	Page 2
1.9 <u>Owner</u> .....	Page 2
1.10 <u>Property</u> .....	Page 2
1.11 <u>Restrictions</u> .....	Page 3
1.12 <u>Structure</u> .....	Page 3
ARTICLE 2 PROPERTY SUBJECT TO THIS DECLARATION .....	Page 3
2.1 <u>Property Hereby Subjected To This Declaration</u> .....	Page 3
2.2 <u>Unilateral Annexation By Declarant</u> .....	Page 3
2.3 <u>Other Annexation</u> .....	Page 4
ARTICLE 3 MORNINGSIDЕ HOMEOWNERS' ASSOCIATION .....	Page 4
3.1 <u>Purposes, Powers and Duties of the Association</u> .....	Page 4
3.2 <u>Membership in the Association</u> .....	Page 4
3.3 <u>Voting Rights</u> .....	Page 5
3.4 <u>Board of Directors</u> .....	Page 5
3.5 <u>Suspension of Membership</u> .....	Page 5
3.6 <u>Termination of Membership</u> .....	Page 5
3.7 <u>Voting Procedures</u> .....	Page 5
3.8 <u>Bylaws</u> .....	Page 6
ARTICLE 4 ASSESSMENTS .....	Page 17
4.1 <u>Covenant for Assessment and Creation of Lien and Personal Obligation</u> ..	Page 17
4.2 <u>Purpose of Assessment</u> .....	Page 18
4.3 <u>Accumulation of Funds Permitted</u> .....	Page 18
4.4 <u>Initiation Fee</u> .....	Page 18
4.5 <u>General Assessments</u> .....	Page 19
4.6 <u>Special Assessments</u> .....	Page 19
4.7 <u>Specific Assessments</u> .....	Page 19

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNER'S ASSOCIATION ACT, O.C.G.A. § 44-3-220 *ET SEQ* TO WIT: MORNINGSIDЕ SUBDIVISION.

4.8	<u>Marketing Fee and Lien Rights</u>	Page 20
4.9	<u>Subordination of Liens to Mortgages</u>	Page 20
4.10	<u>Remedies of the Association</u>	Page 20
4.11	<u>Date of Commencement of Assessments</u>	Page 21
4.12	<u>Budget Deficits During Declarant Control</u>	Page 21
4.13	<u>Failure to Assess</u>	Page 22
4.14	<u>Estoppel Letter</u>	Page 22
ARTICLE 5	ARCHITECTURAL STANDARDS	Page 22
5.1	<u>General</u>	Page 22
5.2	<u>Guidelines and Procedures</u>	Page 22
5.3	<u>Limitation of Liability</u>	Page 23
5.4	<u>No Waiver</u>	Page 24
5.5	<u>Variances</u>	Page 24
5.6	<u>Enforcement</u>	Page 24
5.7	<u>Architectural Review Committee</u>	Page 25
ARTICLE 6	GENERAL COVENANTS AND RESTRICTIONS	Page 25
6.1	<u>Application</u>	Page 25
6.2	<u>Restriction of Use</u>	Page 25
6.3	<u>Resubdivision of Property</u>	Page 25
6.4	<u>Erosion Control</u>	Page 26
6.5	<u>Landscaping</u>	Page 26
6.6	<u>Trees</u>	Page 26
6.7	<u>Temporary Buildings</u>	Page 26
6.8	<u>Signs</u>	Page 26
6.9	<u>Setbacks</u>	Page 27
6.10	<u>Fences</u>	Page 27
6.11	<u>Roads and Driveways</u>	Page 27
6.13	<u>Clotheslines</u>	Page 27
6.14	<u>Maintenance</u>	Page 28
6.15	<u>Recreational Vehicles and Trailers</u>	Page 28
6.16	<u>Recreational Equipment</u>	Page 28
6.17	<u>Non-Discrimination</u>	Page 28
6.18	<u>Animals</u>	Page 29
6.19	<u>Solid Waste</u>	Page 29
6.20	<u>Outside Storage</u>	Page 29
6.21	<u>Home Businesses</u>	Page 29
ARTICLE 7	ZONING AND OTHER RESTRICTIONS	Page 30

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNER'S ASSOCIATION ACT, O.C.G.A. § 44-3-220 *ET SEQ*

TO WIT: MORNINGSIDE SUBDIVISION.

7.1 Zoning and Private Restrictions ..... Page 30

ARTICLE 8 ENFORCEMENT ..... Page 31

8.1 Right of Enforcement ..... Page 31

8.2 Right of Abatement ..... Page 31

8.3 Specific Performance ..... Page 32

8.4 Collection of Assessments and Enforcement of Lien ..... Page 32

8.5 No Waiver ..... Page 33

ARTICLE 9 DURATION AND AMENDMENT ..... Page 33

9.1 Duration ..... Page 33

9.2 Amendment ..... Page 34

ARTICLE 10 MISCELLANEOUS ..... Page 34

10.1 No Reverter ..... Page 34

10.2 Severability ..... Page 34

10.3 Headings ..... Page 34

10.4 Gender ..... Page 34

10.5 Notices ..... Page 34

10.6 No Liability ..... Page 35

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNER'S ASSOCIATION ACT, O.C.G.A. § 44-3-220 *ET SEQ* TO WIT: MORNINGSIDE SUBDIVISION.

**AMENDED AND RESTATED**  
**DECLARATION**  
**OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR**  
**MORNINGSIDE SUBDIVISION**

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS is made this 18<sup>th</sup> day of April, 2003 by the ("Declarant") of all lots (improved and unimproved) in Morningside Subdivision.

WITNESSETH

WHEREAS, Declarant is the owner of the real property described in Exhibit "A" ("Property") hereof; and

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

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

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNER'S ASSOCIATION ACT, O.C.G.A. § 44-3-220 *ET SEQ* TO WIT: MORNINGSIDE SUBDIVISION.

ARTICLE 1  
DEFINITIONS

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

1.1 Association. "Association" means the Morningside Subdivision Homeowners Association, Inc. (a non-profit corporation organized under the Georgia Nonprofit Corporation Code), its successors and assigns.

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

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

1.4 Declarant. "Declarant" means Classic Community Development, LLC by Enterkin Holdings Company, LLC, Steve Enterkin, Manager, its successors and assigns, if such successors and assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

1.5 Development. "Development" means the Property as subdivided and improved by Declarant.

1.6 Lot. "Lot" means any parcel of land separately listed by tax map reference and shown upon a subdivision plat recorded in the Office of the Clerk of the Superior Court of Coweta County, covering any portion of the Property.

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

1.8 Membership. "Membership" means the collective total of all Members of all classes of the Association.

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

1.10 Property. "Property" means that certain real property described in Exhibit "A" attached hereto.

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNER'S ASSOCIATION ACT, O.C.G.A. § 44-3-220 *ET SEQ* TO WIT: MORNINGSIDE SUBDIVISION.

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

1.12 Structure. "Structure" means:

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

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

(c) any change in the grade at any point on a Lot of more than six (6) inches, whether or not subsection (b) of this Section 1.12 applies to such change.

(d) any soil disturbance, tree removal or landscaping as more fully discussed in Article V.

## ARTICLE 2 PROPERTY SUBJECT TO THIS DECLARATION

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

2.2 Unilateral Annexation By Declarant. As the owner thereof or, if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option from time to time at any time until five (5) years after the recording of this Declaration to subject all or any portion of any portion of adjoining real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the county in which the property to be annexed is located a Supplementary Declaration describing the property being subjected. Any annexation shall be effective upon the filing for record of a Supplementary

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNER'S ASSOCIATION ACT, O.C.G.A. § 44-3-220 *ET SEQ* TO WIT: MORNINGSIDE SUBDIVISION.

Declaration unless a later effective date is provided therein. As long as covenants applicable to the real property previously subjected to this Declaration are not changed and as long as rights of existing Owners are not adversely affected, the Declarant may unilaterally amend this Declaration to reflect the different character of any such annexed real property. If any land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

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

ARTICLE 3  
MORNINGSIDE HOMEOWNERS' ASSOCIATION

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

3.2 Membership in the Association. Every Owner shall automatically be a member of the Association and such membership shall terminate only as provided in this Declaration of Covenants, Restrictions and Easements.

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNER'S ASSOCIATION ACT, O.C.G.A. § 44-3-220 *ET SEQ* TO WIT: MORNINGSIDE SUBDIVISION.

3.3 Voting Rights. The Association shall have one class of voting membership.

Each member, shall be a Member and shall be entitled to one (1) vote for each Lot owned by him. Where such Owner is a group or entity other than one individual person, the vote on behalf of such Owner attributable to a particular Lot shall be exercised only by such individual person as shall be designated in a proxy instrument duly executed by or on behalf of such group or entity and delivered to the secretary of the Association.

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

3.5 Suspension of Membership. The Board may suspend the voting right of any Member who:

(a) shall be subject to the Right of Abatement by reason of having failed to take the reasonable steps to remedy a violation or breach of either the Restrictions or the Design Standards of the ACC within thirty (30) days after having received notice of the same;

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

(c) shall be in violation of the rules and regulations of the Association.

Such suspension shall be for the balance of the period in which said Member or person shall remain in violation, breach or default, as aforesaid. No such suspension shall prevent an Owner's ingress to or egress from his Lot.

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

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

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNER'S ASSOCIATION ACT, O.C.G.A. § 44-3-220 *ET SEQ* TO WIT: MORNINGSIDE SUBDIVISION.

3.8 Bylaws.

BYLAWS  
OF  
MORNINGSIDE SUBDIVISION OWNERS ASSOCIATION, INC.

Article 1

Name, Membership, Applicability and Definitions

3.8.1.1 Name. The name of the corporation shall be Morningside Subdivision Owners Association, Inc. (hereinafter sometimes referred to as the "Association").

3.8.1.2 Membership. The Association shall have one class of membership, as is more fully set forth in that certain Declaration of Protective Covenants, Conditions, Restrictions and Easements for Morningside Subdivision (such Declaration, as amended, renewed, or extended from time to time, is hereinafter sometimes referred to as the "Declaration"), the terms of which pertaining to membership are specifically incorporated by reference herein.

3.8.1.3 Definitions. The words used in these Bylaws shall have the same meaning as set forth in the Declaration, unless the context shall prohibit.

Article 2

Association: Meetings, Quorum, Voting, Proxies

3.8.2.1 Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the members as may be designated by the Board of Directors, either in the Community or as convenient thereto as possible and practical.

3.8.2.2 Annual Meetings. There shall be an annual meeting of the members at such date, place and time as the Board of Directors shall determine to receive the reports of the outgoing Board of Directors, to install directors for the ensuing year and to transact such other business as may come before the meeting.

3.8.2.3 Special Meetings. The President or the Board of Directors may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association upon the delivery of a petition signed and dated by members entitled to cast at least

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNER'S ASSOCIATION ACT, O.C.G.A. § 44-3-220 *ET SEQ* TO WIT: MORNINGSIDE SUBDIVISION.

25% of the Total Association Vote and describing the purpose or purposes for which it is to be held. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose(s) thereof. No business shall be transacted at a special meeting, except those matters that are within the purpose or purposes described in the notice.

3.8.2.4 Record Date. The Board of Directors shall fix in advance a record date for a determination of members entitled to notice of and to vote at any meeting of members or any adjournment thereof, or to make a determination of members for any other purpose, such date to be not more than seventy (70) days before the date on which the particular action requiring such determination of members is to be taken.

3.8.2.5 Notice of Meetings. It shall be duty of the Secretary to mail or to cause to be delivered to the Lot of each member (as shown in the records of the Association as of the record date) a notice of each annual or special meeting of the Association stating the date, time and place where it is to be held and if and to the extent required by the Georgia Nonprofit Corporation Code (O.C.G.A. Section 14-3-101, et seq.) or other applicable law (the "Governing Law"), the purpose(s) thereof. If an Owner wishes notice to be given at an address other than the Lot, the Owner shall designate by notice in writing to the Secretary such other address. Notices shall be mailed or delivered not less than ten (10) days (or if notice is mailed by other than first-class or registered mail, thirty (30) days) nor more than sixty (60) days before the meeting. If any meeting of the members is adjourned to a different date, time or place, notice need not be given of the new date, time or place, if the new date, time or place is announced at the meeting before adjournment. If, however, a new record date is or must be fixed under the Governing Law notice of the adjourned meeting shall be given to persons who are members of record as of the new record date.

3.8.2.6 Waiver of Notice. Waiver of notice of a meeting of the members shall be deemed the equivalent of proper notice. Any member may, in writing, signed by the member, waive notice of any meeting of the members, either before or after such meeting. Attendance at a meeting by a member, whether in person or by proxy, shall be deemed waiver by such member of lack of notice or defective notice, unless such member specifically objects to lack of proper notice at the time the meeting is called to order.

3.8.2.7 Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, a majority of the members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNER'S ASSOCIATION ACT, O.C.G.A. § 44-3-220 *ET SEQ* TO WIT: MORNINGSIDE SUBDIVISION.

3.8.2.8 Membership List. After the record date for any meeting is established by the Board of Directors, the Secretary shall prepare an alphabetical list of the names and addresses of all of the members who are entitled to notice of the meeting. Beginning at least two business day after notice is given of the meeting for which the list was prepared, the list of members shall be available for inspection by any member or a member's agent or attorney at the Association's principal office or at such other reasonable place as may be specified in the notice. In addition, the list shall be available for inspection at the meeting or any adjournment thereof.

3.8.2.9 Voting. The voting rights of the members shall be as set forth in the Articles of Incorporation and the Declaration, and such voting rights are specifically incorporated herein.

3.8.2.10 Proxies. At all meetings of members, each member may vote in person or by proxy. All proxy appointment forms shall be in writing, dated, and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon: (a) receipt of notice by the Secretary of the death or judicially declared incompetence of a member; (b) receipt by the Secretary of written revocation signed by the member; (c) receipt by the Secretary of a subsequent appointment form signed by the member; (d) attendance by the member and voting in person at any meeting; or (e) the expiration of 11 months from the date of the proxy appointment form.

3.8.2.11 Quorum. The presence, in person or by proxy, of members entitled to cast at least 25% of the votes entitled to be cast at the meeting shall constitute a quorum at all meetings of the Association. The members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

3.8.2.12 Action Without A Formal Meeting. Any action required or permitted to be approved by the members may be approved without a meeting if one or more consents, in writing, setting forth the action so taken, shall be signed and dated by members (including the Declarant, if the consent of the Declarant is required) holding the voting power required to pass such action at a meeting held on the record date for such action. The record date for such action shall be the date that the first member signs a consent. Such action shall be approved when the Secretary receives a sufficient number of such consents dated within 70 days of the record date for such action. If less than unanimous consent is obtained, the approval shall be effective ten days after the Secretary given written notice of the approval to all members who did not sign a consent. Each signed consent shall be included in the minutes of meetings of members filed in the permanent records of the Association.

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNER'S ASSOCIATION ACT, O.C.G.A. § 44-3-220 *ET SEQ* TO WIT: MORNINGSIDE SUBDIVISION.

3.8.2.13 Action By Written Ballot. Any action that may be taken at any annual, regular or special meeting of members may be taken without a meeting if approved by written ballot as provided herein. The Association shall deliver a written ballot to each member entitled to vote on the matter. The written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. All solicitations for votes by written ballot shall indicate the number of responses needed to meet the quorum requirements; state the percentage of approvals necessary to approve each matter other than election of directors; and specify the time by which a ballot must be received by the Association in order to be counted. A timely written ballot received by the Association may not be revoked. Approval by written ballot of an action shall only be valid when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting held to authorize such action and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. The results of each action by written ballot shall be certified by the Secretary and shall be included in the minutes of meetings of members filed in the permanent records of the Association.

### Article 3

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

3.8.3.1 Governing Body: Composition. The affairs of the Association shall be governed by a Board of Directors. Directors shall be natural persons who are 18 years of age or older. Except for directors appointed by the Declarant, each director must reside in the Community and be a member or the spouse of a member; provided, however, no Person may serve on the Board at the same time with such Person's spouse or any co-Owner or Occupant of such Person's Lot.

3.8.3.2 Directors Appointed by Declarant. The Declarant shall have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association until such time as the first of the following events shall occur: (a) the expiration of five (5) years after the date of the recording of the Declaration; (b) the date on which seventy-five (75%) percent of the Lots planned by Declarant to be a part of the Community shall have been improved with a dwelling and conveyed to an Owner for occupancy as a residence; or (c) the surrender by Declarant in writing of the authority to appoint and remove directors and officers of the Association. The directors appointed by the Declarant need not be Owners or residents in the Community. The total number of Lots planned by Declarant for the Community shall initially be the number of Lots shown on the Declarant's land use plan for the development as it may be amended from time to time. Inclusion of property on the land use plan shall not obligate the Declarant to subject such property to the Declaration, nor shall exclusion of property from the initial land use plan bar Declarant from subjecting such property to the Declaration.

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNER'S ASSOCIATION ACT, O.C.G.A. § 44-3-220 *ET SEQ* TO WIT: MORNINGSIDE SUBDIVISION.

BK02171PG070

The final total number of Lots planned for the Community shall be the actually number of Lots shown on the recorded subdivision plats for the Community regardless of any different number of Lots shown from time to time on the land use plan. The Declarant shall notify the Association when the final subdivision plat for the Community has been recorded.

3.8.3.3 Number of Directors. During the period that the Declarant has the right to appoint and remove the officers and directors of the Association as provided above, the Board of Directors shall consist of from one to three members as determined by Declarant in writing from time to time. Thereafter, the Board shall consist of three members, who shall be elected as provided below.

3.8.3.4 Nomination of Directors. Elected directors may be nominated from the floor, if a meeting is held for the election of directors and may also be nominated by a nominating committee, if established by the Board. All candidates shall have a reasonable opportunity to communicate their qualifications to the members and to solicit votes.

3.8.3.5 Election and Term of Office. After the Declarant's right to appoint directors and officers terminates, the Association shall call a special meeting (or take action under Section 2.12 or Section 2.13 in lieu of a meeting) and the members shall elect three directors. The members of the Board of Directors shall hold office for **one year** and shall continue in office until their respective successors shall have been elected and take office. At annual meetings of the membership thereafter (or pursuant to Section 2.12 or Section 2.13 in lieu of a meeting), directors shall be elected. The three candidates receiving the most votes shall be elected.

3.8.3.6 Removal of Directors. At any annual, regular or special meeting of the Association, any one or more of the members of the Board of Directors elected by the members may be removed, with or without cause, by a majority of the Total Association Vote and a successor may then and there be elected to fill the vacancy thus created. The notice of the meeting shall state that the purpose, or one of the purposes, of the meeting is removal of a director. A director whose removal by the members has been proposed shall be given an opportunity to be heard at the meeting. Additionally, any director who has three consecutive unexcused absences from Board meetings or who is delinquent in the payment of an assessment for more than 30 days may be removed by a majority vote of the remaining directors.

3.8.3.7 Vacancies. Vacancies in the Board of Directors caused by any reason, excluding the removal of a director by vote of the Association, shall be filled by a vote of the majority of the remaining directors. Each Person so selected shall serve the unexpired portion of the term.

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNER'S ASSOCIATION ACT, O.C.G.A. § 44-3-220 *ET SEQ* TO WIT: MORNINGSIDE SUBDIVISION.

3.8.3.8 Organization Meetings. The first meeting of a newly elected Board of Directors shall be held within ten days after the election at such time and place as the directors may conveniently assemble.

3.8.3.9 Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by the Board, provided that, after the right of Declarant to appoint the directors terminates, at least four such meetings shall be held during each fiscal year with at least one per quarter. Notice of the regular schedule shall constitute sufficient notice of such meetings.

3.8.3.10 Special Meetings. Special meetings of the Board of Directors shall be held when requested by the President, Vice President or by any two directors. The notice shall specify the date, time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by one of the following methods: (a) by personal delivery (including commercial delivery service) to such director's home or office; (b) written notice by first class mail, postage prepaid; or (c) by telephone communication (including facsimile), either directly to the director or to the director's home or office. All such notices shall be given or sent to the director's address or telephone number as shown on the records of the Association. Notices sent by first class mail shall be deposited with the U.S. Postal Service at least four days before the time set for the meeting. Notices given by personal delivery or telephone shall be given at least two days before the day set for the meeting.

3.8.3.11 Waiver of Notice. The business transacted at any meeting of the Board of Directors, however called and notices or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if (a) a quorum is present, and (b) either before or after the meeting, each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes which is included in the minutes or filed with the official records of the Association. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.8.3.12 Quorum of Board of Directors. At all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors.

3.8.3.13 Compensation. No director shall receive any compensation from the Association for acting as such.

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNER'S ASSOCIATION ACT, O.C.G.A. § 44-3-220 *ET SEQ* TO WIT: MORNINGSIDE SUBDIVISION.

BK02171PG072

3.8.3.14 Open Meetings. All meetings of the Board shall be open to all members, but members other than directors may not participate in any discussion or deliberation unless expressly so authorized by the Board.

3.8.3.15 Executive Session. The Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personal matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

3.8.3.16 Action Without A Formal Meeting. Any action required or permitted to be taken at a meeting of the directors may be taken without a meeting if one or more consents, in writing, setting forth the action so taken, shall be signed by a majority of the directors and delivered to the Association for inclusion in the minutes for filing in the corporate records.

3.8.3.17 Telephonic Participation. One or more directors may participate in and vote during any meeting of the Board by telephone conference call or any other means of communication by which all directors participating may simultaneously hear each other during the meeting. Any such meeting at which a quorum participates shall constitute a meeting of the Board.

3.8.3.18 Powers. The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by law, the Declaration, Articles or these Bylaws directed to be done and exercised by the members. In addition to the duties imposed by these Bylaws or by any resolution of the Association that may hereafter be adopted, the Board of Directors shall have the power to and be responsible for the following, in way of explanation, but not limitation:

- (a) preparation and adoption of an annual budget in which there shall be established the contribution of each member to the common expenses;
- (b) making assessments to defray the common expenses and establishing the means and methods of collecting such assessments;
- (c) providing for the operation, care, upkeep, and maintenance of all areas which are the maintenance responsibility of the Association;

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNER'S ASSOCIATION ACT, O.C.G.A. § 44-3-220 *ET SEQ* TO WIT: MORNINGSIDE SUBDIVISION.

- (d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;
- (e) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association;
- (f) making and amending rules and regulations;
- (g) opening of bank accounts on behalf of the Association and designating the signatories required;
- (h) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules and regulations adopted by it, and bringing any proceedings which may be instituted on behalf of or against the members concerning the Association;
- (i) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;
- (j) keeping books with detailed accounts of the receipts and expenditures of the Association and the actions thereof, and specifying the maintenance and repair expenses and any other expenses incurred; and
- (k) authorization of contracts on behalf of the Association.

3.8.3.19 Management Agent. **The Declarant or an affiliate of the Declarant may be employed as managing agent or manager.** The Board of Directors may employ for the Association a professional management agent or agents at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. The term of any management agreement shall not exceed one year and shall be subject to termination by either party, without cause and without penalty, upon ninety (90) days' written notice.

3.8.3.20 Borrowing. The Board of Directors shall have the power to borrow money without the approval of the members of the Association; provided, however, except as otherwise provided in the Declaration, the Board shall obtain membership approval in the same manner as for special assessments, in the event that the total amount of such borrowing exceeds or would exceed ten percent of the annual budget of the Association.

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNER'S ASSOCIATION ACT, O.C.G.A. § 44-3-220 *ET SEQ* TO WIT: MORNINGSIDE SUBDIVISION.

BK02171PG074

3.8.3.21 Fining or Suspension Procedure. The Board shall not impose a fine (a late charge shall not constitute a fine) or suspend a member's right to vote or to use anypart of the Common Property unless and until the following procedure is followed:

(a) Written notice shall be delivered to the member by first-class or certified mail sent to the address of the member shown on the Association's records, specifying:

- (1) the nature of the violation, the fine or suspension to be imposed and the date, not less than fifteen (15) days from the date of the notice, that the fine or suspension will take effect;
- (2) that the violator may, within ten days from the date of the notice, request a hearing regarding the fine or suspension imposed;
- (3) the name, address and telephone numbers of a person to contact to challenge the fine or suspension;
- (4) that any statements, evidence, and witnesses may be produced by the violator at the hearing; and
- (5) that all rights to have the fine or suspension reconsidered are waived if a hearing is not requested within ten days of the date of the notice.

(b) If a hearing is requested, it shall be held before the Board in executive session, and the violator shall be given a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing. No fine or suspension shall be imposed prior to the date that is five days after the date of the hearing.

Article 4  
Officers

3.8.4.1 Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer. Any two or more offices may be held by the same Person, excepting the offices of President and Secretary. The President and Treasurer shall be elected from among the members of the Board of Directors.

3.8.4.2 Election, Term of Office, and Vacancies. Except during the period in which the Declarant has the right to appoint the officers of the Association, the officers of the Association shall be appointed annually by the Board of Directors at the first meeting of the Board of Directors following the election of directors. A vacancy in any office arising because of

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNER'S ASSOCIATION ACT, O.C.G.A. § 44-3-220 *ET SEQ* TO WIT: MORNINGSIDE SUBDIVISION.

death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

3.8.4.3 Additional Officers and Agents. The Board of Directors may appoint such other officers, including vice presidents, assistant secretaries and assistant treasurers, and agents as it shall deem necessary. Such officers and agents shall hold their respective offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the board of directors.

3.8.4.4 Salaries. The officers shall receive no compensation.

3.8.4.5 Removal. Except for officers appointed by the Declarant, any officer may be removed, with or without cause, by the Board of Directors.

3.8.4.6 President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the members and directors. The immediate supervision of the affairs of the Association shall be vested in the President. It shall be the President's duty to attend to the business of the Association and maintain strict supervision over all of its affairs and interests. The President shall keep the Board of Directors fully advised about the affairs and conditions of the Association, and shall manage and operate the business of the Association pursuant to and in accordance with such policies as may be prescribed from time to time by the Board of Directors.

3.8.4.7 Vice President. The Vice President(s), if any, shall act in the President's absence or disability and shall have all powers, duties, and responsibilities provided for the President when so acting, and shall perform such other duties as shall from time to time be imposed upon any Vice President by the Board or delegated to a Vice President by the President.

3.8.4.8 Secretary. The Secretary shall keep the minutes of all meetings of the members and of the Board of Directors; notify the members and directors of meetings as provided by these bylaws and Georgia law; have custody of the seal of the Association; affix such seal to any instrument requiring the same; attest the signature or certify the incumbency or signature of any officer of the Association; and perform such other duties as the President, or the Board of Directors may prescribe. The Secretary shall perform the duties of the Treasurer of the Association in the absence or disability of the Treasurer.

3.8.4.9 Treasurer. The Treasurer shall keep, or cause to be kept, the financial books and records of the Association, and shall faithfully account for the Association's funds, financial assets, and other assets entrusted to the Treasurer's care and custody. The Treasurer shall make such reports as may be necessary to keep the President and the Board of Directors

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNER'S ASSOCIATION ACT, O.C.G.A. § 44-3-220 *ET SEQ* TO WIT: MORNINGSIDE SUBDIVISION.

BK02171PG076

informed at all times as to the financial condition of the Association, and shall perform such other duties as the President, or the Board of Directors may prescribe. The Treasurer shall maintain the money and other assets of the Association in the name and to the credit of the Association in such depositories as may be designated by the Board of Directors. The Treasurer may provide for the investment of the money and other assets of the Association consistent with the needs of the Association to disburse such money and assets in the course of the Association's business. The Treasurer shall perform the duties of the Secretary of the Association in the absence or disability of the Secretary.

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

Article 5  
Committees

Advisory committees to perform such tasks and to serve for such periods as may be designated by the Board or as provided in the Declaration are hereby authorized. Each committee shall be composed and shall operate in accordance with the terms of the Declaration or resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors. An advisory committee shall not be authorized to exercise any authority of the Board under the Articles of Incorporation, the Declaration, these Bylaws or the Georgia Nonprofit Corporation Code.

Article 6  
Miscellaneous

3.8.6.1 Fiscal Year. The fiscal year of the Association shall be the calendar year unless otherwise determined by resolution of the Board.

3.8.6.2 Parliamentary Rules. Roberts Rules of Order (current edition) shall govern the conduct of all Association proceedings, when not in conflict with Georgia law, the Articles of Incorporation, the Declaration or these Bylaws.

3.8.6.3 Conflicts. If there are conflicts or inconsistencies between the provisions of Georgia law, the Articles of Incorporation, the Declaration and these Bylaws, the provisions of Georgia law, the Declaration, the Articles of Incorporation and the Bylaws (in that order) shall prevail.

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNER'S ASSOCIATION ACT, O.C.G.A. § 44-3-220 *ET SEQ* TO WIT: MORNINGSIDE SUBDIVISION.

3.8.6.4 Amendment. These Bylaws may be amended by the Board of Directors with the consent of the Declarant if such amendment is necessary to: (a) bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) enable any title insurance company to issue title insurance coverage with respect to the Lots subject to the Declaration; (c) enable an institutional or governmental lender or purchaser of mortgage loans, including, without limitation, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make or purchase Mortgage loans on the Lots subject to the Declaration; (d) enable any governmental agency or private insurance company to insure or guarantee Mortgage loans on the Lots subject to the Declaration; or (e) comply with the provisions of the Georgia Property Owners Association Act, O.C.G.A. § 44-3-220 *et seq.* In addition, these Bylaws may be amended upon the affirmative vote of at least two-thirds (2/3) of the Total Association Vote and the consent of Declarant; provided, however, that the U.S. Department of Veterans Affairs (if it is then guaranteeing Mortgages in the Community or has issued a project approval for the guaranteeing of such mortgages) and/or the U.S. Department of Housing and Urban Development (if it is then insuring any Mortgage in the Community or has issued a project approval for the insuring of such mortgages) shall have the right to veto amendments to these Bylaws for as long as the Declarant has the right to appoint and remove the directors and officers of the Association.

ARTICLE 4  
ASSESSMENTS

4.1 Covenant for Assessment and Creation of Lien and Personal Obligation. The Declarant hereby covenants and agrees, and each Owner, jointly and severally, for himself, his heirs, distributees, legal representatives, successors and assigns, by acceptance of a deed for a Lot, whether or not the covenants contained herein shall be expressed in any such deed, hereby covenants and agrees as follows:

- (a) to pay to the Association the annual assessments which may or shall be levied by the Association pursuant to this Declaration against all Lots owned by him;
- (b) to pay to the Association any special assessments for capital improvements and other charges which may or shall be levied by the Association pursuant to this Declaration against all Lots owned by him;
- (c) that there is hereby created a continuing charge and lien upon all Lots owned by him against which all such assessments are made to secure payment of such assessments and any interest thereon;

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNER'S ASSOCIATION ACT, O.C.G.A. § 44-3-220 *ET SEQ* TO WIT: MORNINGSIDE SUBDIVISION.

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

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

(f) that all annual and special assessments (together with interest thereon and costs of collection including reasonable attorney's fees) levied against any Lot or Lots owned by him during the period that he is an Owner shall be (in addition to levying a continuing charge and lien against such Lot or Lots as provided in Section 3.01(c) of this Declaration) a personal obligation which will survive any sale or transfer of the Lot or Lots owned by him; provided, however, that such personal obligation for delinquent assessments shall not pass to an Owner's successor in title unless expressly assumed by such successor.

4.2 Purpose of Assessment. The assessments levied by the Association shall be used exclusively for the purpose of providing for the common good and general welfare of the Owners of Lots in the Development, including, but not limited to, security, the administration and enforcement of the Design Standards (as hereinafter defined) of the ACC (as hereinafter defined), the payment of operating costs and expenses of the Association and the payment of all principal and interest when due on all debts owed by the Association.

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

4.4 Initiation Fee. At closing, the homeowner shall pay a initiation fee. The initial initiation fee shall be \$175.00, which shall remain in effect, until and unless changed by Declarant.

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNER'S ASSOCIATION ACT, O.C.G.A. § 44-3-220 *ET SEQ* TO WIT: MORNINGSIDE SUBDIVISION.

4.5 General Assessments. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year. The Board shall cause the budget and the assessments to be levied against each Lot for the year to be delivered to each member at least thirty (30) days prior to the due date of any general assessment. The budget and the assessment shall become effective unless disapproved at a meeting by a majority of the Total Association Vote and the Declarant. In addition to the other items set forth below, the budget shall also include repayment, if any, to Declarant for deficits of the Association. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for any period, then and until such time as a budget shall have been determined, as provided herein, the budget in effect shall continue. General assessments shall be levied equally on all similarly situated Lots and shall be paid in such manner and on such dates as may be fixed by the Board of Directors, which may include, without limitation, acceleration, upon ten (10) days' written notice for delinquents. Unless otherwise provided by the Board, the assessment shall be paid in one annual installment. General assessments include any sums the Board determines necessary for the continued ownership, operation and maintenance of the Common Property, operating expenses of the Association, payment for any items of betterment and the establishment of reserve funds as the Board shall deem proper. General assessments may include, without limitation, sums for property taxes, insurance premiums, legal and accounting fees, management fees, charges for utilities, cleaning and janitor services, landscape maintenance, expenses and liabilities incurred as provided herein and in the Articles of Incorporation and Bylaws for indemnification of officers and directors and in connection with the enforcement of rights and duties of the Association against Owners and others. The initial annual assessment shall be \$400.00, which amount shall remain in effect until changed, as herein provided.

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

4.7 Specific Assessments. The Board shall have the power to levy specific assessments as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. Fines levied pursuant to this Declaration and the costs of maintenance performed by the Association for which the Owner is responsible shall be specific assessments. The Board of Directors may also specifically assess Owners for Association expenses as follows: (a) expenses of the Association which benefit less than all of the Lots may be specifically assessed equitably among all of the Lots which are benefitted according to the

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNER'S ASSOCIATION ACT, O.C.G.A. § 44-3-220 *ET SEQ* TO WIT: MORNINGSIDE SUBDIVISION.

BK02171PG080

benefit received; and (b) Expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be assessed equitably among all Lots according to the benefit received.

4.8 Marketing Fee and Lien Rights. At all closings, Declarant shall receive a marketing fee in the amount of one percent of sales price. In the event Seller has used a real estate company approved by Declarant, Declarant may refund the one percent marketing fee, at Declarant's discretion. Declarant and/or the Association, as applicable, shall have the right to record a notice of lien in the public deed records, in the event of any default hereunder which shall constitute public notice of the lien rights and which shall survive the closing of the property.

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

4.10 Remedies of the Association. Any assessments or installments thereof which are not paid when due shall be delinquent. In addition to the lien rights, the personal obligation of the then Owner to pay such assessments shall remain such Owner's personal obligation and shall also pass to such Owner's successors-in-title. Such Owner shall nevertheless remain as fully obligated as before to pay to the Association any and all amounts which such Owner was obligated to pay immediately preceding the transfer; and such Owner and such successors-in-title shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such Owner and such successors-in-title creating any indemnification of the Owner or any relationship of principal and surety as between themselves. Any assessment or installment thereof delinquent for a period of more than ten (10) days shall incur a late charge of the greater

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNER'S ASSOCIATION ACT, O.C.G.A. § 44-3-220 *ET SEQ* TO WIT: MORNINGSIDE SUBDIVISION.

of Ten (\$10.00) Dollars or Ten percent (10%) of the amount due. The Association may cause a notice of delinquency to be given to any Owner who has not paid within ten (10) days following the due date. In the event that the assessment remains unpaid after sixty (60) days, the Association may institute suit to collect such amounts and/or to foreclose its lien. The Association may file a claim of lien with the Office of the Clerk of Superior Court of the county where the lot is located, but no such claim of lien shall be required to establish or perfect the lien for unpaid assessments. Each Owner, by acceptance of a deed vests in the Association the right and power to bring all actions against such Owner personally, for the collection of such charges as a debt or to foreclose the lien. The lien provided for in this Declaration shall be in favor of the Association and shall be for the benefit of all Owners. The Association shall have the power to bid on the Lot at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. The Association may also suspend the membership rights of the delinquent Owner, including the right to vote, the right of enjoyment in and to the Common Property and recreational facilities and the right to receive and enjoy such servicing and other benefits as may then be provided by the Association. Any such suspension shall not affect such members obligation to pay assessments coming due during the period of such suspension and shall not effect the permanent lien on such Lot in favor of the Association.

4.11 Date of Commencement of Assessments. Assessments shall commence when the Board of Directors first determines a budget and levies assessments. The assessments provided for herein shall commence as to a Lot on the first to occur of the date that the Lot is first occupied for residential purposes; or is conveyed by Declarant to an owner who is not a builder or successor Declarant. A Lot shall be occupied for residential purposes when it has been improved with a dwelling and has been conveyed to an owner who intends to occupy the dwelling, or, if the dwelling is occupied as a residence before such conveyance, the date of such occupancy.

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

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNER'S ASSOCIATION ACT, O.C.G.A. § 44-3-220 *ET SEQ* TO WIT: MORNINGSIDE SUBDIVISION.

Mortgage secured by the Common Property or any of the improvements maintained by the Association shall be given in connection with such loan.

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

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

## ARTICLE 5 ARCHITECTURAL STANDARDS

5.1 General. No exterior construction, alteration or addition of any improvements of any nature whatsoever (including, without limitation, staking, clearing, excavation, grading, filling, construction of impervious surface, building, exterior alteration of existing improvements, change in the exterior color of any existing improvement and planting and removal of landscaping materials), shall be commenced or placed upon any part of the Community unless, installed by the Declarant or an affiliate of the Declarant, approved in accordance with this Article, or otherwise expressly permitted under this Declaration. Any Owner may remodel, paint or redecorate the interior of the structures on the Lot without approval hereunder. However, modifications to the interior of porches, patios and similar portions of a structure visible from outside the Lot shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. This Article shall not apply to the activities of the Declarant, affiliates of the Declarant, nor to improvements to the Common Property by or on behalf of the Association. This Article may not be amended without the written consent of the Declarant until (a) the Declarant no longer has the right to unilaterally annex additional property to the Community; and (b) each Lot has been improved with a dwelling for which a certificate of occupancy has been issued.

5.2 Guidelines and Procedures. Except as provided above, no exterior construction, addition or alteration shall be made unless and until plans and specifications shall have been submitted in writing to and approved by the Declarant. Such plans and specifications shall be of

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNER'S ASSOCIATION ACT, O.C.G.A. § 44-3-220 *ET SEQ* TO WIT: MORNINGSIDE SUBDIVISION.

sufficient detail to allow the Declarant to make its review and to the extent required by the Declarant shall show the nature, kind, shape, height, materials and location of the proposed improvement. The Declarant may adopt written design and development guidelines and application and review procedures, which may provide for a review fee. The Declarant shall have sole and full authority to prepare and to amend, from time to time at its sole discretion and without notice, the architectural guidelines. The Declarant shall make the architectural guidelines available to Owners and builders who seek to engage in construction upon all or any portion of the Community and such Owners and builders shall conduct their operations strictly in accordance therewith. If the Declarant fails to approve or to disapprove submitted plans and specifications within thirty (30) days after receipt of all required plans and specifications, such approval shall be deemed to have been given. As a condition of approval under this Article, each Owner, on behalf of such Owner and such Owner's successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance to and on any improvement, change, modification, addition or alteration. In the discretion of the Declarant, an Owner may be required to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of such Owner and such Owner's successors-in-interest. The Declarant shall be the sole arbiter of such plans and may withhold approval for any reason, including, without limitation, purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. The Declarant and its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property in the Community to inspect for the purpose of ascertaining whether or not these restrictive covenants have been or are being complied with. Such Persons shall not be deemed guilty of trespass by reason of such entry. If construction does not commence on a project for which plans have been approved within 12 months of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the plans to the Declarant for reconsideration.

5.3 Limitation of Liability. Plans and specifications are not approved for engineering or structural design or quality of materials and by approving such plans and specifications the Declarant assumes no liability or responsibility therefore or for any defect in any structure constructed from such plans and specifications. Neither Declarant, the Association, nor the officers, directors, members, employees and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval or to any Owner of property affected by these restrictions by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every Person who submits plans and specifications and every Owner agrees that such Person or Owner will not bring any action or suit against Declarant, the Association or the officers, directors, members, employees and agents of any of them to recover any damages and hereby releases, remises, quitclaims and covenants not to sue for all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance or hereby waives the provisions of any law which provides

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNER'S ASSOCIATION ACT, O.C.G.A. § 44-3-220 *ET SEQ* TO WIT: MORNINGSIDE SUBDIVISION.

that a general release does not extend to claims, demands and causes of action not known at the time the release is given.

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

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

5.6 Enforcement. Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Declarant, Owners shall, at their own cost and expense, remove such nonconforming structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Declarant and its agents shall have the right to enter the property, remove the nonconforming structure or improvement, and restore the property to substantially the same condition as previously existed. All costs, including, without limitation, attorney's fees, may be assessed against the Lot as a specific assessment. Any contractor, subcontractor, agent, employee or other invitee of any Owner who fails to comply with the terms and provisions of this Article and the architectural guidelines may be excluded by the Declarant from the Community, subject to any applicable notice and hearing procedures contained in the Bylaws. In such event, neither the Declarant, the Association or the officers, directors, members, employees and agents of any of them shall be held liable to any Person for exercising the rights granted by this paragraph. In addition to any other remedies available to the Declarant, in the event of noncompliance with this Article, the Declarant may record in the appropriate land records a notice of violation hereunder naming the violating Owner. In addition to the foregoing, the Declarant shall have the authority and standing to pursue any and all remedies available at law and equity to enforce the provisions of this Article.

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNER'S ASSOCIATION ACT, O.C.G.A. § 44-3-220 *ET SEQ* TO WIT: MORNINGSIDE SUBDIVISION.

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

ARTICLE 6  
GENERAL COVENANTS AND RESTRICTIONS

6.1 Application. The covenants and restrictions contained in this Article 6 shall pertain and apply to all Lots and to all Structures erected or placed thereon.

6.2 Restriction of Use. Lots may be used for single-family residences only and for no other purpose.

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

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNER'S ASSOCIATION ACT, O.C.G.A. § 44-3-220 *ET SEQ* TO WIT: MORNINGSIDE SUBDIVISION.

6.4 Erosion Control. No activity which may create erosion or siltation problems shall be undertaken on any Lot without the prior written approval of the ACC of plans and specifications for the prevention and control of such erosion or siltation. The ACC may, as a condition or approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include (by way of example and not of limitation) physical devices for controlling the run-off and drainage of water, special precautions in grading and otherwise changing the natural landscape and required landscaping as provided for in Section 6.5. Guidelines for the prevention and control of erosion and siltation may be included in the Design Standards of the erosion and siltation may be included in the Design Standards of the ACC. Among the lot owners/property owners duties and obligations shall be the duty and responsibility to insure that all builders, contractors, subcontractors and others absolutely refrain from depositing or permitting to be deposited on the streets of Morningside Subdivision mud or soil from trucks or vehicles during the process of constructing dwellings, grading, landscaping, constructing driveways or otherwise.

6.5 Landscaping. No construction or alteration of any Structure shall take place without the prior written approval by the ACC of plans and specifications for the landscaping to accompany such construction or alteration. Guidelines for the landscaping to accompany the construction or alteration of any Structure may be included in the Development Guidelines of the ACC.

6.6 Trees. No tree having a diameter of six (6) inches or more [measured from a point two (2) feet above ground level] shall be removed from any Lot unless such removal is in conformity with the approved landscaping plans and specifications submitted pursuant to the provisions of Section 6.5 hereof. Guidelines relating to the preservation of trees and other natural resources and wildlife upon the Property may be included in the Design Standards of the ACC. No earth disturbance, grading or tree removal shall take place for driveways, dwellings or otherwise without the presence of at least one member of the Architectural Control Committee who shall observe and approve any grading or earth disturbance.

6.7 Temporary Buildings. No temporary building, trailer, garage or building under construction shall be used, temporarily or permanently, as a residence on any Lot except as temporary sleeping or living quarters required or desirable for security purposes in accordance with plans and specifications therefor approved by the ACC. No contractor or builder shall erect on any Lot any temporary building or shed for use in connection with construction on such Lot.

6.8 Signs.

(a) No signs whatsoever (including but not limited to commercial and similar signs) shall, without the ACC's prior written approval of plans and specifications therefor, be

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNER'S ASSOCIATION ACT, O.C.G.A. § 44-3-220 *ET SEQ* TO WIT: MORNINGSIDE SUBDIVISION.

installed, altered or maintained on any Lot, or on any portion of a Structure visible from the exterior thereof, except:

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

(ii) not more than one "For Sale" or "For Rent" sign, such sign having a maximum face area of one square foot; provided, however, that if, at the time of any desired use of such sign, the Association is making "For Sale" or "For Rent" signs available for the use of Owners, the signs made available by the Association must be used;

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

(b) In no event during approved construction of any Structure shall more than one job identification sign be approved by the ACC.

6.9 Setbacks. In approving plan and specifications for any proposed Structure, the ACC may establish setback requirements for the location of such Structure. Guidelines for setback requirements for the location of such Structure. Guidelines for setbacks may be included in the Design Standards of the ACC. No Structure shall be erected or placed on any Lot unless its location is consistent with such setbacks.

6.10 Fences. No fence or wall of any kind shall be erected, maintained, or altered on any Lot without the prior written approval of the ACC of plan and specifications for such fences and walls. Guidelines relating to the design, location and uses of fences and walls may be included in the Design Standards of the ACC.

6.11 Roads and Driveways. No road or driveway shall be constructed or altered on any Lot without prior written approval of the ACC of plans and specifications for such road and driveways. Guidelines relating to the design and location of roads and driveways may be included in the Design Standards of the ACC.

6.12 Antennae. Radio and television antennae installed on the exterior of any Structure or on any Lot shall not be visible from the street abutting such Lot. No antennae shall be installed or used for the purpose of transmitting electronic signals. No satellite receiving dish or similar structure or device may be erected or maintained on any Lot.

6.13 Clotheslines. No outside clothesline placed on any Lot shall be visible from the street abutting such Lot.

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNER'S ASSOCIATION ACT, O.C.G.A. § 44-3-220 *ET SEQ* TO WIT: MORNINGSIDE SUBDIVISION.

6.14 Maintenance. Each Owner shall keep and maintain each Lot and Structure owned by him, as well as all landscaping located thereon, in good condition and repair, including, but not limited to (i) the repairing and painting (or other appropriate external care) of all Structures; (ii) the seeding, watering and mowing of all lawns; and (iii) the pruning and trimming of all trees, hedges and shrubbery so that the same are not obstructive of a view by motorists or pedestrians of street traffic. If in the opinion of the ACC, the Owner shall fail to perform the duties imposed by this Section, the ACC shall notify the Association. If the Board of Directors of the Association shall agree with the determination of the ACC with respect to the failure of said Owner to perform the duties imposed by this Section, then the Board shall give written notice to the Owner to remedy the condition in question, setting forth in reasonable detail the nature of the condition in question, setting forth in reasonable detail the nature of the condition and the specific action or actions needed to be taken to remedy such condition. If the Owner shall fail to take reasonable steps to remedy the condition within thirty (30) days after the mailing of said notice by certified mail, then the Association shall have the Right of Abatement. Guidelines relating to the maintenance of Structures and landscaping may be included in the Design Standards of the ACC.

6.15 Recreational Vehicles and Trailers. The ACC, in reviewing the plans and specifications for any proposed Structure, may require that special parking areas be made available for recreational vehicles. No trailer, trailer house, boat, or recreational vehicle shall be parked on any Lot (or on any street or roadway abutting any Lot), except on such parking areas as specified by the ACC pursuant to this Section 6.15 or within enclosures or behind screening erected in accordance with plans and specifications submitted to and approved by the ACC as required by this Declaration. Guidelines relating to screening may be included in the Design Standards of the ACC. While nothing contained herein shall prohibit the use of profitable or temporary buildings or trailers as field offices by contractors during actual construction, the use, appearance and maintenance of such buildings or trailer must be specifically approved by the ACC prior to its being moved on the construction site.

6.16 Recreational Equipment. Recreational and playground equipment shall be placed or installed only upon the rear of the Lot.

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

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNER'S ASSOCIATION ACT, O.C.G.A. § 44-3-220 *ET SEQ* TO WIT: MORNINGSIDE SUBDIVISION.

6.18 Animals. No animals, including birds, insects, and reptiles, may be kept on any Lot, unless kept thereon solely as household pets and not for commercial purposes. No animal shall be allowed to become a nuisance. No Structure for the care, housing or confinement or any animal shall be constructed, placed or altered on any Lot unless plans and specifications for said Structure have been approved by the ACC.

6.19 Solid Waste.

(a) No person shall dump rubbish, garbage or any other form of solid waste on any Lot or upon any street or roadway abutting any Lot.

(b) Except during approved construction, no person shall burn rubbish, garbage, or any other form of solid waste on any Lot.

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

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

6.20 Outside Storage. Outside storage of personal property shall not be allowed unless screened by enclosures, fences or other devices and located in the rear of properties, not visible from the street, for which plans and specifications have been approved by the ACC. Guidelines for screening of such outside storage may be included in the Design Standards of the ACC.

6.21 Home Businesses. No profession or home business or industry will be conducted on any Lot or in any Structure with the exception of:

(a) any occupation or activity carried on by a member of the family on the premises, in connection with which:

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNER'S ASSOCIATION ACT, O.C.G.A. § 44-3-220 *ET SEQ* TO WIT: MORNINGSIDE SUBDIVISION.

(i) there is no group instruction, assembly or activity and no sign is used other than a name plat not more than one (1) square foot in area, and no display that will indicate from the exterior that the building is being utilized in part for any purpose other than that of a dwelling.

(ii) there is no commodity sold upon the premises;

(iii) no person is employed other than a member of the immediate family residing on the premises; and

(iv) no mechanical equipment is used except that which is normally used for purely domestic or household purposes;

(b) the use, in conformity with subsection (a) of this Section 5.21 of the premises by a physician, surgeon, dentist, lawyer, clergyman, or other professional person for consultation or emergency treatment, but not for the general practice of his profession;

(c) the use, in conformity with subsection (a) of this Section 5.21 of the premises by salesmen, manufacturer's agents, insurance agents or representatives and contractors when such person does not carry any inventory of goods or commodities for sale or warehousing upon the premises other than samples which might be transported by and which are usually carried by such persons into a prospect's office or place of business, provided however that the premises shall not be used as a place where prospective clients of such persons would call in the normal course of business carried on by such persons.

ARTICLE 7  
ZONING AND OTHER RESTRICTIONS

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

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNER'S ASSOCIATION ACT, O.C.G.A. § 44-3-220 *ET SEQ* TO WIT: MORNINGSIDE SUBDIVISION.

ARTICLE 8  
ENFORCEMENT

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

8.2 Right of Abatement.

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

(b) The Right of Abatement, as used in this Section means the right of the Association, through its agents and employees, to enter at all reasonable time upon any Lot or Structure, as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove, or repair such violation, breach or other condition which may exist thereon contrary to the provisions hereof, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and such actions provided such entry and such actions are carried out in accordance with the provisions of this Section, and with cost thereof including the costs of collection including reasonable attorneys' fees, together with interest thereon at eight percent (8%) per annum, to be a binding personal obligation of the Owner enforceable in law, as well as a lien on such Owner's Lot enforceable pursuant to the provisions hereof. Such lien shall be superior to any and all charges, lien or encumbrances which may in any manner arise or be imposed upon the Lot after such entry whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, excepting only (i) such liens for taxes or other public charges as are by applicable law made superior, (ii) the liens created and (iii) all deeds to secure debt given to secure a loan the proceeds of which are used (1) to purchase a lot or lots (together with any and all Structures which may from time to time be placed or located thereon) and (2) to finance the construction, repair or alteration of Structures.

(c) Remedies available to the Architectural Control Committee or Association for violation of these covenants shall include, but not be limited to, an *ex parte* restraining order, at the violator's expense. By executing these covenants, the violator consents to the entry of an *ex parte* restraining order, upon affidavit of a member of the Architectural Control Committee or

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNER'S ASSOCIATION ACT, O.C.G.A. § 44-3-220 *ET SEQ* TO WIT: MORNINGSIDE SUBDIVISION.

officer of the Association that a violation of these covenants is occurring and that irreparable harm shall occur, in the absence of a restraining order. The signatories to these covenants also waive any requirement of a bond.

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

8.4 Collection of Assessments and Enforcement of Lien.

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

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

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNER'S ASSOCIATION ACT, O.C.G.A. § 44-3-220 *ET SEQ* TO WIT: MORNINGSIDE SUBDIVISION.

of such sale, and after reserving therefrom the entire amount of assessment, interest, cost or other charge due, together with all costs and expenses of sale and fifteen per centum of the aggregate amount due for attorneys' fees, shall pay any excess to such Owner, or to the heirs or assigns of such Owner as provided by law. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise and are granted as cumulative to the remedies for collection of said indebtedness provided by law.

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

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

#### ARTICLE 9 DURATION AND AMENDMENT

9.1 Duration. This Declaration and Restrictions contained herein shall run with and bind the Property for a period of twenty (20) years from and after the date when this Declaration is filed for record with the Clerk of the Superior Court of Coweta County, Georgia, after which time this Declaration and the Restrictions shall be automatically renewed for successive periods of ten (10) years provided, however, that after the end of the said twenty (20) year period and during any ten (10) year renewal period (but only during such renewal period), this Declaration and the Restrictions contained herein may be terminated by an instrument executed by the proper Association Officers and recorded in the office of the Clerk of the Superior Court of Coweta County, Georgia, or in such other place of recording as may be appropriate at the time of the execution of such instrument, pursuant to a resolution approving such termination which is

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNER'S ASSOCIATION ACT, O.C.G.A. § 44-3-220 *ET SEQ* TO WIT: MORNINGSIDE SUBDIVISION.

approved by a two-thirds (2/3) vote of those Class A Members of the Association who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the provisions of the By-Laws of the Association.

9.2 Amendment. This Declaration and the Restrictions contained herein may not be amended in any respect except by an amendment executed by the proper Association officers and recorded in the Office of the Clerk of the Superior Court of Coweta County, Georgia, or in such other place of recording as may be appropriate at the time of the execution of such instrument, pursuant to a resolution approving such amendment which is approved by a two-thirds (2/3) majority vote of members of the Association who are present in person or by proxy and voting at a meeting of the Members duly held in accordance with the provisions of the By-Laws of the association.

ARTICLE 10  
MISCELLANEOUS

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

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

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

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

10.5 Notices. All amendments, notices, requests, objections, waivers, rejections, agreements, approvals, disclosures or consents of any kind made pursuant to this Declaration, whether made by the Declarant, the Association, the ACC, the Owner, or any other person, shall be in writing. All such writings shall be sufficient only if deposited in the United States Mail, with sufficient postage, by registered or certified mail, return receipt requested, and sent to the following address:

Classic Community Development, LLC  
by Enterkin Holdings Company, LLC  
Steve Enterkin, Manager  
P.O. Box 142348  
Fayetteville, Georgia 30214

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNER'S ASSOCIATION ACT, O.C.G.A. § 44-3-220 *ET SEQ* TO WIT: MORNINGSIDE SUBDIVISION.

George C. Rosenzweig  
Rosenzweig, Jones & MacNabb, P.C.  
32 South Court Square  
P.O. Box 220  
Newnan, Georgia 30264

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

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

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

DECLARANT: CLASSIC COMMUNITY  
DEVELOPMENT, LLC  
by Enterkin Holdings Company, LLC

By: [Signature]  
Its sole member Steve Enterkin, Manager

Signed, sealed and delivered  
in the presence of:

[Signature]  
WITNESS

[Signature]  
NOTARY PUBLIC



My Commission Expires: 8.28.2003

[AFFIX NOTARY SEAL]

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNER'S ASSOCIATION ACT, O.C.G.A. § 44-3-220 *ET SEQ* TO WIT: MORNINGSIDE SUBDIVISION.

**EXHIBIT "A"**

**TO DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS FOR  
MORNINGSIDE SUBDIVISION**

**TRACT 1**

BEGIN AT THE SOUTHEAST CORNER OF LAND LOT 287 OF SAID FIRST LAND DISTRICT OF COWETA COUNTY, GEORGIA, AND FROM SAID POINT OF BEGINNING, RUN THENCE NORTH 1 DEGREE WEST A DISTANCE OF 1473 FEET; THENCE SOUTH 88 DEGREES 30 MINUTES WEST A DISTANCE OF 1431 FEET; THENCE SOUTH 1 DEGREE 30 MINUTES EAST A DISTANCE OF 209 FEET; THENCE SOUTH 88 DEGREES 30 MINUTES WEST A DISTANCE OF 243 FEET; THENCE SOUTH 8 DEGREES WEST ALONG THE CENTER OF ROCKAWAY ROAD A DISTANCE OF 882 FEET; THENCE CONTINUING ALONG THE CENTER OF SAID ROAD SOUTH 17 DEGREES 30 MINUTES WEST A DISTANCE OF 200 FEET; THENCE CONTINUING ALONG THE CENTER LINE OF SAID ROAD SOUTH 27 DEGREES 30 MINUTES WEST 200 FEET; THENCE NORTH 89 DEGREES EAST A DISTANCE OF 1990 FEET TO THE POINT OF BEGINNING; SAID TRACT OR PARCEL OF LAND CONTAINING 59.29 ACRES. SAID PROPERTY IS CONVEYED SUBJECT TO ROAD RIGHT-OF-WAY.

LESS AND EXCEPT THE FOLLOWING PROPERTY, TO WIT: ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 287 OF THE FIRST LAND DISTRICT OF COWETA COUNTY, GEORGIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TO FIND THE POINT OF BEGINNING, BEGIN AT A POINT LOCATED AT THE INTERSECTION OF THE WEST RIGHT-OF-WAY OF ROCKAWAY ROAD AND THE SOUTH LINE OF LAND LOT 287; RUNNING THENCE NORTH 19 DEGREES 24 MINUTES 00 SECONDS EAST A DISTANCE OF 823.20 FEET TO A POINT LOCATED ON THE EAST RIGHT-OF-WAY OF ROCKAWAY ROAD AND THE POINT OF BEGINNING; TURNING THENCE NORTH 88 DEGREES 30 MINUTES 00 SECONDS EAST A DISTANCE OF 354.00 FEET TO A POINT; TURNING THENCE NORTH 07 DEGREES 03 MINUTES 55 SECONDS EAST A DISTANCE OF 498.00 FEET

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNER'S ASSOCIATION ACT, O.C.G.A. § 44-3-220 *ET SEQ* TO WIT: MORNINGSIDE SUBDIVISION.

BK 02171 PG 097

TO A POINT; RUNNING THENCE SOUTH 88 DEGREES 30 MINUTES 00 SECONDS WEST A DISTANCE OF 354.00 FEET TO A POINT LOCATED ON THE EAST RIGHT-OF-WAY OF ROCKAWAY ROAD; RUNNING THENCE SOUTH 07 DEGREES 03 MINUTES 55 SECONDS WEST A DISTANCE OF 498.00 FEET TO A POINT OF BEGINNING. SAID PROPERTY CONTAINING 4.00 ACRES, MORE OR LESS.

**TRACT 2**

ALL THAT TRACT OR PARCEL OF LAND LYING IN LAND LOT 288 OF THE 1<sup>ST</sup> LAND DISTRICT OF COWETA COUNTY, GEORGIA, AND BEING MORE PARTICULARLY IDENTIFIED BY BEGINNING AT THE NORTHEAST CORNER OF LAND LOT 288 (THE POINT OF BEGINNING) THEN RUNNING ALONG THE EASTERN BOUNDARY OF LAND LOT 288, SAID BOUNDARY BEING THE COMMON LINE BETWEEN LAND LOTS 288 AND 311, SOUTH 1° 47 MINUTES 09 SECONDS EAST A DISTANCE OF 1427.47 FEET TO A ROD AND/OR PIN, THENCE SOUTH 88° 45 MINUTES 48 SECONDS WEST A DISTANCE OF 2904.56 FEET TO ANOTHER ROD OR PIN LOCATED ON THE EASTERN RIGHT OF WAY OF ROCK-A-WAY ROAD, THENCE FOLLOWING SAID RIGHT OF WAY NORTH 36° 03 MINUTES 56 SECONDS EAST A DISTANCE OF 289.91 FEET, THENCE ALONG AN ARC FOR A DISTANCE OF 541.75 FEET (SAID ARC HAVING A RADIUS OF 5286.00 FEET, A CHORD OF 541.51 FEET AND A CHORD BEARING OF NORTH 33° 47 MINUTES 52 SECONDS EAST, THENCE NORTH 30° 50 MINUTES 19 SECONDS EAST A DISTANCE OF 531.67 FEET, THENCE NORTH 29° 11 MINUTES 58 SECONDS EAST A DISTANCE OF 350.43 FEET TO ANOTHER ROD, LOCATED APPROXIMATELY AT THE INTERSECTION OF THE EASTERN RIGHT OF WAY OF ROCK-A-WAY ROAD AND THE NORTHERN BOUNDARY OF LAND LOT 288, (TOTAL FRONTAGE LONG ROCK-A-WAY ROAD BEING 1713.76 FEET), THENCE NORTH 88° 44 MINUTES 27 SECONDS EAST A DISTANCE OF 1944.47 FEET BACK TO THE POINT OF BEGINNING, SAID TRACT CONTAINING APPROXIMATELY 78.58 ACRES, MORE OR LESS, AS SHOWN IN THAT ZONING PLAT FOR CLASSIC COMMUNITY DEVELOPMENT, LLC, DATED SEPTEMBER 19, 2000 BY R. M. BOYD & ASSOCIATES, SAID PARCEL HAVING BEEN CONVEYED TO MRS. J. W. ARNALL BY WARRANTY DEED DATED JANUARY, 1945, RECORDED IN DEED BOOK 44, PAGE 599 OF THE OFFICIAL REAL ESTATE RECORDS OF THE SUPERIOR COURT OF COWETA COUNTY, GEORGIA.

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNER'S ASSOCIATION ACT, O.C.G.A. § 44-3-220 *ET SEQ* TO WIT: MORNINGSIDE SUBDIVISION.