

DECLARATION OF COVENANTS, RESTRICTIONS, AND EASEMENTS  
FOR MAGRUDER CROSSING

THIS DECLARATION OF COVENANTS, RESTRICTIONS, AND EASEMENTS FOR MAGRUDER CROSSING (hereinafter referred to as the "Declaration") is made as of the 8<sup>th</sup> day of MARCH, 2001, by MAGRUDER PROPERTIES, INC., a Georgia Corporation, (hereinafter referred to as "Declarant").

BACKGROUND STATEMENT

Declarant is or was the Owner of certain real property in Gwinnett County, Georgia, which is more particularly described on Exhibit "A" attached hereto and made a part hereof.

Declarant intends to develop on lands, including the real property above, a development to be known as MAGRUDER CROSSING, (hereinafter referred to as the "Development"). Declarant intends by this Declaration to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within the property now or hereafter made subject to this Declaration, by the recording of this Declaration and amendments thereto. Declarant also desires to establish a method for the administration, maintenance, preservation, use and enjoyment of the property that is now or hereafter subjected to this Declaration and certain other properties described in this Declaration.

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

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

ARTICLE I  
DEFINITIONS

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

1.01 **Association:** "Association" means Magruder Crossing Homeowner's Association, Inc. (a non-profit, non-stock, membership corporation, organized under the Georgia Non-Profit Corporation Code) its successors and assigns.

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

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- 1.03            **By-Laws:** "By-Laws" means the By-Laws of the Association.
- 1.04            **Commencement Date:** "Commencement Date" means MARCH 8, 2001.
- 1.05            **Common Property:** "Common Property" means all real and personal property owned by the Association or in certain instances over which the Association has been granted permanent easements, for the common use and enjoyment of the Owners.
- 1.06            **Declarant:** "Declarant" means Magruder Properties, Inc., a Georgia Corporation, and its successors-in-title and assigns, provided any such successors-in-title or assigns shall acquire for the purpose of development or sale all or any portion of the remaining undeveloped or unsold portions of the real property described in Exhibit "A", or the real property which is intended to become part of the Development, and provided further, in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign is designated as the "Declarant" hereunder by the Grantor of such conveyance, which Grantor shall be the "Declarant" hereunder at the time of such conveyance, provided, further, upon such designation of successor Declarant, all rights and obligations of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the property described in Exhibit "A", attached hereto, and which is now or hereafter subjected to this Declaration, there shall be only one person or legal entity entitled to exercise the rights and powers of the "Declarant" hereunder at any one time.
- 1.07            **Development-Wide Standard:** "Development-Wide Standard" means the standard of conduct, maintenance, or other activity generally prevailing in the Development. Such standard may be more specifically determined by the "Board" and by committees required or permitted to be established pursuant to this Declaration or the By-Laws. Such determination, however, must be consistent with the Development-Wide Standard originally established by the Declarant.
- 1.08            **Lot:** "Lot" means any parcel of land shown upon a subdivision plat recorded in the office of the Clerk of the Superior Court of Gwinnett County, covering any portion of the Property, as such boundaries may be modified in accordance this Declaration provided, however, that no portion of the common Property shall ever be a lot except as provided in Section 2.05.
- 1.09            **Member:** "Member" means any member of the Association.
- 1.10            **Membership:** "Membership" means the collective total of all Members of the Association.
- 1.11            **Occupant:** "Occupant" means any person occupying all or any portion of a Residence located within the Development for any period of time, regardless of whether such person is a tenant or the Owner of such property.
- 1.12            **Owner:** "Owner" means the record owner (including Declarant), whether one or more persons or entities, of a fee simple title to any Lot; provided, however that where fee simple title has been transferred and is being held merely as security for the repayment of a loan, the person or entity who would own the Lot in fee simple if such loan were paid in full shall be considered the Owner.
- 1.13            **Property:** "Property" means that certain real property hereinabove described, together with such additional real property as may subjected to the provisions of the Declaration in accordance with the provisions hereof.

1.14 **Residence:** "Residence" means a Structure and the Lot on which it is situated which is intended for independent use and occupancy as a residence for a single family. A Structure and the Lot upon which it is situated shall not become a Residence until a certificate of occupancy shall have been issued by the appropriate governmental authorities as a pre-requisite to the occupancy of such Residence and until the Lot and Structure located thereon shall have been conveyed to a third party other than the builder thereof. The owner of a Residence shall notify the Association or its designee immediately upon issuance of a certificate of occupancy for the Residence.

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

1.16 **Structure:** "Structure" means:

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

(b) Any excavation, grading, fill, ditch, diversion dam or other thing or devise 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 (6) inches, whether or not Subsection (b) of this Section applies to such change.

## ARTICLE II COMMON PROPERTY

2.01 **Conveyance of Common Property:**

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

(b) It is contemplated by the Declarant that the Declarant will convey to the Association Common Property for scenic and natural area preservation and for general recreational use. The Declarant may, at Declarant's sole discretion, modify, alter, increase reduce and otherwise change the Common Property contemplated to be conveyed to the Association in accordance with this Subsection (b) of this Section 2.01 at any time prior to conveyance of such Common Property to the Association.

(c) In addition to the property described in Subsection (b) of this Section 2.01, the Declarant may convey to

the Association in accordance with this Section 2.01 such other real and personal property as the Declarant may determine to be necessary or proper for the completion of the Development.

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

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

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

- (a) Promulgate rules and regulations relating to the use, operation, and maintenance of the Common Property;
- (b) Borrow money for the purpose of carrying out the activities of the Association, including the acquisition, construction, improvement, equipping and maintenance of Common Property, and in aid thereof to encumber by deed to secure debt, mortgage or other security interest any or all of the Association's property including Common Property and revenues from assessments, user fees, and other sources; and provided, however, that, the Association shall not deed, grant or convey to anyone any mortgage, deed to secure debt or other security interest on or in Common Property constituting real estate without approval by a two-thirds (2/3) vote of the Members of the Association and Declarant during the period when the Declarant has the right to appoint members of the Board;
- (c) Grant easements or rights-of-way over Common Property to any municipality or other governmental body, agency or authority, to any quasi-public agency, or to any utility company or cable television system;
- (d) Dedicate or transfer all or any part of the Common Property or interests therein to any municipality or other governmental body, agency or authority for such purposes and subject to such provisions and conditions as may be agreed upon by the Association and such grantee, including a provision that such property or interest shall, if such dedication or transfer is approved by a two-thirds (2/3) vote of the Members of the Association, cease to be subject to this Declaration or all or any part of the Restrictions while held by any such municipality or other governmental body, agency or authority;
- (e) Charge reasonable fees in connection with the admission to and use of facilities or services by Members and Non-members; provided that in setting any such fee the Board may establish reasonable classifications which shall be uniform within each such class but need not be uniform between such classes;

- (f) Suspend, pursuant to Section 3.05, the voting rights of any Member and the right of enjoyment granted or permitted by Section 2.02;
- (g) Sell, lease or otherwise convey all or any part of its properties and interests therein;
- (h) Enforce all applicable provisions of valid agreements of the Association relating to the Common Property or any part thereof; and
- (i) Maintain any and all landscaping treatments previously installed by the Declarant, to the extent that such landscaping is not otherwise maintained by the appropriate county and/or municipal entity having jurisdiction over the roads serving the property.

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

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

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

**2.07            Maintenance:** The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair and replacement, subject to any insurance then in effect, of all landscaping and improvements situated on the Common Property. In addition, the Association shall maintain grass and other landscaping located along or in dedicated rights-of-way which were installed and maintained by Declarant, to the extent permitted by the applicable governmental authority, and shall maintain all entry features, lakes and retention ponds for the Development. The foregoing maintenance shall be performed consistent with the Development-Wide Standard.

The Association shall also have the right, but not the obligation, to maintain and provide services for other property now owned by the Association, whether located within or without the boundaries of the Development, and to enter into easements and agreements to share costs regarding such property where the Board has determined that this would benefit the Owners.

**ARTICLE III**  
**MAGRUDER CROSSING HOMEOWNER'S ASSOCIATION**

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

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

**3.03            Voting Rights:**

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

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

(c)        The Development will be composed of Lots to be developed in phases containing unequal numbers of Lots. Each such phase will be platted of record in the office of the Clerk of the Superior Court of Gwinnett County. The Declarant shall notify the Association in writing when the final phase of the Development has been so platted of record. By acceptance of a deed conveying a Lot, each Owner acknowledges that, upon the annexation of additional real property composed of Lots pursuant to this Declaration, the total votes outstanding in the Association will automatically increase based upon the number of Lots in the phases added and in accordance with the formula set forth in Subsection (b) of this Section 3.03; provided, however, nothing contained herein shall obligate the Declarant to develop any proposed phase of the Development unless such phase is subjected to this Declaration.

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

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

- (a) Shall be subject to the Right of Abatement, as defined in Sections 5.01 and 7.02, or elsewhere herein;
- (b) Shall be delinquent in the payment of any assessment levied by the Association pursuant to the provisions of Article IV hereof; or
- (c) Shall be in violation of any of the rules and regulations of the Association relating to the use, operation, or maintenance of Common Property.

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

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

**3.07                    Voting Procedures:** The procedures for the election of Directors of the Association and the resolution of such other issues as may be brought before the Membership of the Association shall be governed by this Declaration, the Georgia Non-Profit Corporation Code, the Articles of Incorporation of the Association, and the By-Laws of the Association, a copy of which is attached hereto as Exhibit "B", as each shall, from time to time, be in force and effect.

**3.08                    Control by Declarant:**

(a) Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the By-Laws of the Association, Declarant hereby retains the right to appoint and remove any members of the board of the Association, and any officer or officers of the Association until the first of the following events shall occur: (i) the expiration of seven (7) years after the date of the recording of this Declaration; (ii) the date upon which fifty (50%) percent of all of the Residences submitted or proposed to be submitted to this Declaration have been conveyed to owners other than a person or persons constituting Declarant; or (iii) the surrender by Declarant of the authority to appoint and remove directors and officers by an express amendment to this Declaration executed and recorded by the Declarant.

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

**ARTICLE IV  
ASSESSMENTS**

**4.01            Covenants for Assessments and Creation of Lien and Personal Obligation:** Each Owner of a Lot and/or Residence, jointly and severally, for himself, his heirs, devisees, legal representatives, successors and assigns, by acceptance of a deed for a Lot and/or Residence, 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 and any specific assessments which may or shall be levied by the Association pursuant to this Declaration against all Lots and/or Residences owned by him.
- (b) To pay to the Association any special assessment for capital improvements and other charges which may or shall be levied by the Association pursuant to this Declaration against all Lots and/or Residences owned by him.
- (c) That there is hereby created a continuing charge and lien upon all Lots and/or Residences owned by him against which all such assessments are made to secure payment of such assessments and any interest thereon as provided in Section 4.09 hereof and costs of collection including reasonable attorneys' fees.
- (d) That such continuing charge and lien on such Lot and/or Residence binds such Lot and/or Residence in the hands of the then Owner, and the Owner's heirs, devisees, legal representatives, successors and assigns. Such charge and lien is superior to any and all charges liens or encumbrances which may hereafter in any manner arise or be imposed upon such Lots whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, except (i) such liens for taxes or other public charges as are by applicable law made superior, and (ii) any first mortgage on Lot or Lots which has been recorded prior to the date of such continuing charge and lien (a "Prior Recorded First Mortgage"). Such continuing charge and lien shall not be affected by any sale or transfer of a Lot, except that a sale or transfer of a Lot pursuant to a foreclosure of a Prior Recorded First Mortgage shall extinguish such continuing charge and lien.
- (e) That no sale or transfer at foreclosure, or in lieu of foreclosure, shall relieve any Lot and/or Residence from liability for any assessment thereafter assessed.
- (f) That all annual, special, and specific assessments (together with interest thereon as provided in Section 4.09 of this Declaration and costs of collection including reasonable attorneys' fees) levied against any Lot and/or Residence owned by him during the period that he is an owner shall be (in addition to being a continuing charge and lien against such Lot and/or Residence as provided in Section 4.01(c) of this Declaration) a personal obligation which will survive any sale or transfer of the Lot and/or Residence owned by him; provided, however, that such personal obligation for delinquent assessments shall not pass to an Owner's successor in title unless expressly assumed by such successor.

**4.02            Purpose of Assessments:** The assessments levied by the Association shall be used exclusively for the purpose of providing for the common good and general welfare of the people of the Development, including, but not limited to, security, the acquisition, construction, improvement, maintenance, and equipping of Common property, the

enforcement of the Restrictions contained in this Declaration, the payment of operation costs and expenses of the Association, and the payment of all principal and interest when due on all debts owed by the Association.

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

**4.04      Initiation Fee and Annual Assessment:**

(a) Each Residence shall be subject to an initiation fee of One Hundred dollars (\$100.00) which shall not be prorated and a maximum annual assessment of One Hundred and Fifty dollars (\$150.00), as may be prorated in accordance with the number of days in the Assessment Year such Residence existed and as may be adjusted pursuant to Sections 4.04(b) and (c), below. The words "Assessment year" as used herein shall mean the calendar year, and the "First Assessment Year" shall be the year in which Declarant has completed all improvements it deems necessary or desirable, in Declarant's sole discretion.

(b) Commencing with the First Assessment Year and continuing thereafter, without a vote of the membership, the annual assessment may be increased at any time and from time to time during each Assessment Year by a maximum percentage which is equal to the greater of (i) ten (10%) percent or (ii) the percentage increase, if any, in the Consumer price Index for all Urban Consumers (the "CPI") as published by the Bureau of Labor Statistics of the U. S. Department of Labor for the United States, All Items (1982 - 84 = 100) for the monthly period ending on the 31st day of the month of March which immediately proceeds each Assessment Year over the CPI for the monthly period ending on the 31st day of the month of March one year earlier. If such Consumer Price Index should cease to be published, the Association shall use the most comparable governmental index published in lieu thereof.

(c) Commencing with the First Assessment Year and continuing thereafter, the annual assessment for each Assessment Year may, at any time, and, from time to time, be increased more than the amount permitted in Section 4.04(b), if such increase is approved by a two-thirds (2/3) vote of the Members of the Association.

**4.05      Special Assessments:**

In addition to the annual assessments authorized by this Article IV, the Association may levy, in any Assessment Year and with such frequency as the Association shall deem necessary, special assessments for the purpose of paying, in whole or in part, any unanticipated operating expenses, as well as the cost of any construction, reconstruction, repair or replacement of a capital improvement on the Common property. Such special assessments may be levied by the Board in any Assessment Year without the approval of the Members, which special assessments in the aggregate do not exceed an amount equal to the annual assessment then in effect. Special assessments exceeding said amount shall require the approval of a two-thirds (2/3) vote of the Members of the Association.

**4.06      Assessment Procedure:**

(a) The Board shall establish the annual assessment for each Assessment Year at an amount not in excess of

the maximum annual assessment as determined by the provisions of this Article IV. The annual assessment shall be due and payable on January 1 of each year (such date is hereinafter referred to as the "Due Date"). The Board shall also establish an annual budget which shall list the estimated operating expenses and shall contain an amount to be set aside each year into a reserve allowance to be used for future repair and replacement of the Common Property. The Board shall cause the Association to send to each Owner at least thirty (30) days in advance of the due Date written notice setting forth the amount of the annual assessment and the Due Date. The annual assessment shall become due on the thirtieth (30th) day following such written notice or the Due Date, whichever is later. The Board may establish reasonable payment procedures to allow or require payment of the annual assessment in installments during the Assessment Year. The Board shall also establish payment procedures for payment of any special assessments for capital improvements which may be levied in accordance with the provisions of this Article IV.

(b) All Members of the Association shall be given written notice by the board not less than thirty (30) nor more than sixty (60) days in advance of any meeting of the Members of the Association at which the Board shall propose taking action pursuant to Section 4.04(c) or Section 4.05 of this Article IV. Such written notice shall specify under which Section or Sections the Board will propose action.

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

**4.08                    Contribution by Declarant:** For so long as Declarant has the authority to appoint and remove directors and officers of the Association, Declarant shall not be liable for the payment of any assessments. Provided, however, during said period Declarant shall advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the association, and the sum of annual, special, parcel, and specific assessments collected by the Association in any Assessment Year, and such advances shall be evidenced by promissory notes from the Association to Declarant.

**4.09                    Effect of Non-Payment of Assessments:** Any assessment which is not paid on or before the Due Date shall bear interest after the Due Date at the lower of the highest legal rate of interest which can be charged or the rate of twelve (12%) percent per annum or at such rate as the Board may from time to time establish, provided, however, that in no event shall the Board have the power to establish a rate of interest in violation of the laws of the State of Georgia. In the event of default in the payment of any one or more installments of an assessment, the Board may declare any remaining balance of the assessment at once due and payable. In the event that an Owner shall fail to pay fully any portion of any assessment prior to the date on which payment is due, such unpaid portion (including any remaining balance declared immediately due and payable in accordance with the preceding sentence), together with interest and costs of collection including a reasonable attorneys' fees, shall be a binding personal obligation of such Owner as well as a lien on such Owner's Residence enforceable in accordance with the provisions of this Declaration.

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

4.11 **Approval by Declarant:** Notwithstanding anything to the contrary contained herein, no special assessment shall be made without the Approval of Declarant for so long as Declarant has the right to appoint Members of the Board.

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

- (a) Expenses of the Association which benefit less than all of the Residences, which may be specifically assessed equitably among all of the Residences which are benefited according to the benefit received;
- (b) Expenses incurred by the Association pursuant to Section 5.01 hereof;
- (c) Reasonable fines as may be imposed in accordance with terms of the Declaration and By-Laws.

4.13 **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, and 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 such a loan in the local area of the community. The Declarant in its sole discretion may guarantee repayment of such loan, if required by the lending institution, but no Mortgage secured by the Common Property or any of the improvements maintained by the Association shall be given in connection with such loan.

## ARTICLE V GENERAL COVENANTS AND RESTRICTIONS

5.01 **General.** This Article sets out certain use restrictions which must be complied with by all Owners and occupants of Lots. These use restrictions may only be amended in the manner provided herein regarding amendment of this Declaration. In addition, any Protective Covenants set forth upon the Final Plat For Magruder Crossing, recorded in Plat Book 88 Pages 183, Clerk of Superior Court of Gwinnett County, Georgia, Plat Records as may be amended or revised from time to time hereafter, together with the Protective Covenants to be set forth upon future Plats of Magruder Crossing, which said Plats shall be recorded in the Plat Records of the Clerk of Superior Court, Gwinnett County, Georgia, as may be amended or revised from time to time, are expressly referenced hereby and incorporated herein and shall pertain and apply to all Lots and to all Structures erected or placed thereon as if fully set forth herein.

5.02 **Residential Use.** All Lots shall be used for single-family residential purposes exclusively. No business or business activity shall be carried on, in or upon any Lot at any time except with the written approval of the Board. Leasing

\* Plat not yet recorded as of the recording of this document. Upon the plat for Magruder Crossing being recorded, the plat book and page shall be incorporated herein.

of a Lot shall not be considered a business or business activity. However, the Board may permit a Lot to be used for business purposes so long as such business, in the sole discretion of the Board, does not otherwise violate the provisions of the Declaration or Bylaws, does not create a disturbance and does not unduly increase traffic flow or parking congestion. The Board may issue rules regarding permitted business activities.

**5.03 Signs.** No sign of any kind shall be erected by an Owner or occupant of a Lot within the Community without the prior written consent of the Architectural Review Committee. Notwithstanding the foregoing, the Board shall have the right to erect reasonable and appropriate signs, and "For Sale" and "For Rent" signs consistent with the Community-Wide Standard and a Lot Owner may erect "For Sale" signs which are in good taste and in keeping with similar types of signs in use in the Atlanta, Georgia area. The provisions of this Section shall not apply to any Person holding a Mortgage who becomes the Owner of any Lot as purchaser at a judicial or foreclosure sale conducted with respect to a first Mortgage or as transferee pursuant to any proceeding in lieu thereof.

**5.04 Vehicles.** The term "vehicles", as used herein, shall include, without limitation, junk vehicles, commercial or industrial vehicles, tractors, trailers, wreckers, hearses, compressors, concrete mixers, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, trucks, campers, buses, vans and automobiles. Vehicles may not be parked in yards and shall not be regularly or habitually parked in front of any Lot.

No vehicle may be left upon any portion of the Community, except in a garage, or other area designated by the Board, for a period longer than five (5) days if it is unlicensed or if it is in a condition such that it is incapable of being operated upon the public highways. After such five (5) day period, such vehicle shall be considered a nuisance and may be removed from the Community. No towed vehicle, boat, recreational vehicle, motor home, or mobile home shall be temporarily kept or stored in the Community for any period in excess of twelve (12) hours unless kept in a garage or other area designated by the Board; vehicles parked in violation of this provision shall be considered a nuisance and may be removed from the Community. Trucks with mounted campers which are an Owner's or occupant's primary means of transportation shall not be considered recreational vehicles, provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal.

No motorized vehicles shall be permitted on pathways or unpaved common Property except for public safety vehicles and vehicles authorized by the Board.

**5.05 Leasing.** Lots may be leased for residential purposes only. All leases shall have a minimum term of six (6) months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, Bylaws, use restrictions, and rules and regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing.

**5.06 Occupants Bound.** All provisions of the Declaration, Bylaws, and of any rules and regulations, use restrictions or design guidelines promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants of Lots even though occupants are not specifically mentioned. Fines may be levied against Owners or occupants. If a fine is first levied against an occupant and is not paid timely, the fine may then be levied against the Owner.

**5.07 Animals and Pets.** No animals, swine, livestock, or poultry of any kind may be raised, bred, kept or permitted on any Lot, with the exception of dogs, cats or other usual and common household pets in reasonable number, as

determined by the Board; provided, however, those pets which are permitted to roam free, or in the sole discretion of the Board, endanger health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners or occupants or the owner of any property located adjacent to the Community may be removed by the Board. No pets shall be kept, bred or maintained for any commercial purpose. Dogs which are household pets shall at all times whenever they are outside be on a leash or otherwise confined in a manner acceptable to the Board. Without prejudice to the Board's right to remove any such household pets, no household pet that has caused damage or injury may be walked in the Community. Animal control authorities shall be permitted to enter the Community to patrol and remove pets. Pets shall be registered, licensed and inoculated as required by law.

**5.08 Nuisance.** It shall be the responsibility of each Owner and occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. No property within the Community shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Community. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Lot unless required by law.

**5.09 Unsightly or Unkempt Conditions.** The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkempt conditions, shall not be pursued or undertaken in any part of the Community.

**5.10 Minimum Size.** No dwelling shall be constructed or maintained on any Lot which dwelling shall have less than sixteen hundred (1,600) square feet of heated floor space, exclusive of garages, porches and terraces, for a one-story dwelling, nor less than eighteen hundred (1,800) square feet overall enclosed, heated living space for a two-story residence.

**5.11. Antennas.** No exterior antennas of any kind shall be placed, allowed, or maintained upon any portion of the Community, including any Lot, if such antenna is visible from any street within the Community. Satellite dishes shall not be allowed to be placed in any front or side yard and may only be located in an area that is screened or fenced so as to be concealed from view of neighboring streets and property. Each Owner and occupant of a Lot acknowledges that this provision benefits all Owners and occupants of Lots and each Owner and occupant of a Lot agrees to comply with this provision despite the fact that the erection of an outdoor antenna or similar device would be the most cost-effective way to transmit or receive the signals sought to be transmitted or received.

**5.12 Drainage.** Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner other than the Declarant shall change or modify the grade or drainage of any Lot after such Lot is graded without the consent of Magruder Properties, Inc.. No Owner or occupant of a Lot may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Declarant hereby reserves a perpetual easement across all Community property for the purpose of altering drainage

and water flow. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

**5.13 Sight Distance at Intersections.** All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where this would create a traffic or sight problem.

**5.14 Clotheslines, Garbage Cans, Woodpiles, Storage Shed.** All clotheslines, garbage cans, woodpiles, swimming pool pumps, filters and related equipment and other similar items shall be located or screened so as to be concealed from view of neighboring streets and property. No separate or detached storage sheds shall be placed or erected on any Lot. All construction debris, rubbish, trash and garbage shall be regularly removed and shall not be allowed to accumulate.

**5.15 Subdivision of Lot.** No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Board or its designee. In addition, no more than one house shall be permitted to be erected on any one lot. Declarant, however, hereby expressly reserves the right to replat any Lot or Lots owned by Declarant. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations.

**5.16 Guns.** The use of firearms in the Community is prohibited. The term, "firearms", includes "B-B" guns, pellet guns, and small firearms of all types.

**5.17 Air Conditioning Units.** Except as may be permitted by the Architectural Review Committee, no window air conditioning units may be installed.

**5.18 Artificial Vegetation, Exterior Sculpture, and Similar Items.** No artificial vegetation shall be permitted on the exterior of any property. Exterior sculpture, fountains, flags, and similar items must be approved by the Architectural Review Committee. Playground equipment, basketball goals, and similar recreational equipment is permitted in the rear yard of Residence only in an area not visible from the street upon which the residence is located but shall not otherwise require the approval of the Architectural Review Committee.

**5.19 Energy Conservation Equipment.** No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless they are an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Architectural Review Committee.

**5.20 Standard Mailboxes.** All residences in the Community shall have standard mailboxes conforming to postal regulations and the guidelines for such mailboxes adopted by the Architectural Review Committee.

**5.21 Swimming Pools.** No swimming pool shall be permitted in the yard of a Residence without the express prior written approval of the Architectural Review Committee. In the event the Architectural Review Committee approves such swimming pool, same shall be permitted only in an area designated by the Architectural Review Committee in the rear yard of the residence and in a location not readily visible from the street upon which the residence is located.

**5.22 Compliance With Laws.** All dwellings shall comply with and be constructed in accordance with all

applicable state, county and municipal building codes, ordinances, rules and regulations.

**5.23 Driveways and Garages.** Except as may be permitted by the Architectural Review Committee, all driveways shall be paved with concrete and all garages shall be two (2) car garages and shall be directly attached to the dwelling which they serve and shall not be separate even if attached by a covered walkway or breezeway.

**5.24 Trailers, Modular or Pre-Fab Homes.** No trailer homes, modular homes or prefabricated homes shall be constructed on any Lot.

**5.25 Architectural Review Committee.** In order to provide a high quality environment for all Owners and to control the type, quality and aesthetics of the Community, the Association shall establish and maintain an Architectural Review Committee ("ARC") which shall have the exclusive jurisdiction over original construction on the Lots and over modifications, additions or alterations made on or to any dwelling as well as the open spaces of all Lots. Notwithstanding anything herein to the contrary, the Declarant, so long as Declarant is the owner of any lot within the Community, shall have the sole authority to appoint all members of the ARC.

The ARC shall promulgate architectural and environmental standards and applicable procedures which it shall make available to all Owners, builders and developers who seek to construct or modify any dwellings within the Community. Such standards and procedures may be modified by the ARC without the consent of any Owner. No construction of any building or structure, or modification of the exterior of any buildings or structures (including without limitation changes in paint color, roof replacement with a different color) and no changes to the open spaces on any Lot (including without limitation changes in landscaping, lot grade, yard ornaments, exterior structures or equipment of any kind or description) shall be permitted without the express written consent of the ARC which may be withheld or delayed in its sole discretion. All original construction and all modifications shall be performed in strict accordance with the final ARC approval. The decision of the ARC shall be final and conclusive. Neither the Declarant, the ARC nor its members shall be liable to any person under any theory or circumstance in connection with the approval or disapproval of any submission to the ARC, including, without limitation, any liability based on the soundness of construction, the adequacy of the plans and specifications, or otherwise. In the event construction does not commence on a project for which the ARC has given its approval within one (1) year of the date of such approval, such approval shall lapse and it shall be necessary for the Owner to resubmit to the ARC for renewal of its approval. All approved landscaping must be completed within thirty (30) days of completion of the construction of a dwelling.

All rights and easements granted to the Association hereunder and all remedies granted to the Association hereunder for violation of this Declaration may, at the election of the Association, also be exercised by the ARC. References within this Declaration to the Association pertaining to rights and easements granted to the Association or actions taken for violation of the terms of the Declaration shall, in the event of such election, also be deemed to refer to and pertain to the ARC.

**5.26 Fences.** No chain link fence or fencing-type barrier of any kind shall be placed, erected, allowed, or maintained upon any portion of the community, including any Lot. All other fencing-type barriers of any kind shall be either wooden, brick stucco, stacked stone or field stone and shall not be erected without the prior written consent of Magruder Properties, Inc..

**5.27 Exposed Concrete Block.** No dwelling shall have exterior exposed concrete block. All exposed concrete block and foundation shall be finished by covering same with the same material that is used to complete the front of the

dwelling.

**5.28 Lighting.** Except for seasonal Christmas decorative lights, all exterior lights must be approved by the Architectural Review Committee.

**5.29 Maintenance.** In addition to those certain covenants incorporated hereinabove, 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. Notwithstanding the foregoing, the maintenance required hereunder shall also extend from the boundary of a Lot to the curb of the street bordering said Lot. If in the opinion of the Board, any Owner shall fail to perform the duties imposed by this Section, then the Board shall give written notice to the Owner to remedy the condition, in question, setting forth in reasonable detail the nature of the condition and the specific action or actions needed to be taken to remedy such condition. If the Owner shall fail to take reasonable steps to remedy the condition within thirty (30) days after the mailing of said written notice by certified mail, then the Association shall have the Right of Abatement as provided in Section 8.02 hereof.

## ARTICLE VI EASEMENTS, ZONING AND OTHER RESTRICTIONS

### 6.01 Easements:

(a) Declarant hereby expressly reserves to the Association and Declarant, its successors and assigns, for so long as the Declarant owns any Lot within the Development, and after which, solely to the Association, blanket perpetual easements in, on, over and under any part of the Property for any purpose which the Association or which Declarant deems reasonably necessary for completing improvements or effecting repairs within the Development, including, by way of example, and not limitation, the following:

- (i) The erection, installation, construction and maintenance of wires, lines, conduits and poles and the necessary or proper attachments and guy wires in connection with the transmission of electricity, telephone, cable television cables and other utilities and similar facilities;
- (ii) The erection, installation, construction and maintenance of storm-water drains, land drains, public and private sewers, retention ponds, irrigation systems, pipelines for supplying gas and water, and for any other public or quasi-public facility, service or function;
- (iii) Slope control purposes, including the right to grade and plant slopes and prevent the doing of any activity which might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow;
- (iv) The planting or replanting of hedges, shrubbery, bushes, trees, flowers and plants of any nature; and
- (v) The maintenance of all entry features and retention ponds for the Development.

(b) In addition there is hereby reserved to Declarant a five (5) foot easement on either side of the boundary line of each Lot and the right to impose on any Lot or other property within the community any other easements necessary or appropriate for the development, maintenance and sale of Lots within the Community as well as the right to release or abandon any easements in favor of Declarant.

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

The Board shall have the right, but shall not be obligated, to enter upon any property within the Community for emergency, security, and safety, which right may be exercised by the manager, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. It is intended that this right of entry shall include (and this right of entry shall include) the right of the Board to enter to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard in the event an Owner or occupant fails or refuses to cure the condition upon request by the Board.

**6.03      Easement for Entry Features:** There is hereby reserved to the Declarant and the Association an easement for ingress, egress, installation, construction landscaping and maintenance of entry features and similar streetscapes for the Community, over and upon each Lot which is located at the corner of a street intersection. The easement and right herein reserved shall include the right to erect and maintain repair and replace an entrance monument and cut, remove and plant trees, shrubbery, flowers and other vegetation around such entry features and streetscapes and the right to grade the land under and around the entry features and streetscapes.

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

**6.05      Easement for Pond Maintenance:** Declarant hereby expressly reserves a perpetual easement for the benefit of Declarant and its successors and assigns, across such portions of the Development, determined in the sole discretion of Declarant (or its successors and assigns), as are necessary to allow for the maintenance of ponds, pondbeds, and shorelines, if any, which are within the Development or which are made available for the use and enjoyment of the Owners within the Development. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment of the property adjacent to the ponds, reasonable steps shall be taken to protect such property, and damage shall be repaired by the person or entity causing the damage at its sole expense. In order to allow the exercise of the rights created pursuant to this easement, no tree or Structure may be placed within twenty (20) feet of the line formed by the highest normal pool elevation of

any pond unless otherwise approved by Magruder Properties, Inc.

## ARTICLE VII ENFORCEMENT

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

**7.02            Right of Abatement:**

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

(b) 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 Lots subject to the lien at auction, at the usual place for conducting sale at the Courthouse in Gwinnett County, Georgia, to the highest bidder for cash, after advertising the time, terms and place of such sale once a week for four (4) weeks immediately preceding such sale (but without regard to the number of days) in the paper in which the Sheriff's advertisements for Gwinnett 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 its 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 its assigns, shall be binding and conclusive upon the owner whose property is the subject matter of such sale, and the heirs, legal representatives, devisees, successors, and assigns of such Owner, and that the conveyance to be made by the Association or its 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 its assigns shall collect the proceeds of such sale, and after reserving therefrom the entire amount of assessments interest, cost or other charge due, together with all costs and expenses of sale and fifteen (15%) percent 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 and any mortgagee of said Lot or Lots. 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 collections of said indebtedness provided by law.

(c) No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot. No diminution or abatement of assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or the by-laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law or ordinance, or with any order or directive of any municipal or

other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

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

## **ARTICLE VIII DURATION AND AMENDMENT**

**8.01**                **Duration:** This Declaration and the Restrictions contained herein shall run with and bind the property for a period of twenty (20) years from and after the date when this Declaration is filed for record with the Clerk of the Superior Court of Gwinnett County, Georgia, after which time this Declaration and 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 Gwinnett County, Georgia, or in such other place of recording as may be appropriate at the time of the execution of such instrument, pursuant to a resolution approving such termination which is approved by a two-thirds (2/3) vote of the Class A Members of the Association.

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

8.03                    **Amendments by Association:** Amendments to this Declaration, other than those authorized by Section 8.02 hereof, shall be proposed and adopted in the following manner:

- (a) Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Association at which such proposed amendment is to be considered and shall be delivered to each Member of the Association.
- (b) At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board or by Members of the Association. such amendment must be approved by Members holding at least two-thirds (2/3) of the total votes in the Association; provided, however (i) that any amendment which materially and adversely affects the security title and interest of any mortgagee must be approved by such mortgagee, and (ii) during any period in which Declarant has the right to appoint and remove officers and directors of the Association, such amendment must be approved by Declarant.
- (c) The agreement of the required percentage of the Owners and, where required, the Declarant and any mortgagee, to any amendment of this Declaration shall be evidenced by their execution of such amendment, or, in the alternative, and provided that Declarant does not then have the right to approve such amendment, the sworn statement of the President and any Vice President or the Secretary of the Association attached to or incorporated in the amendment executed by the Association, which sworn statement shall state unequivocally that the agreement of the required parties was lawfully obtained. Any such amendment of this Declaration shall become effective only when recorded or at such later date as may be specified in the amendment itself.

## ARTICLE IX

### ANNEXATION AND CONSTRUCTION AND SALE PERIOD

9.01                    **Annexation:** Until seven years from the date of this Declaration, or until Declarant surrenders his rights to annex real property pursuant hereto, whichever is earlier, Declarant may annex any real property without the consent of Class A members. Such annexation shall be accomplished by filing in the office of the Clerk of the Superior Court of Gwinnett County an approved subdivision plat describing the real property to be annexed to the property and by including on such subdivision plat a statement that expressly sets forth the Declarant's intention to make such annexed real property subject to the provisions of this Declaration; or by filing an amendment to the Declaration which shall be executed by Declarant and has been consented to by the owners of the real property to be annexed if any portion of such real property is owned by someone other than Declarant. After seven years from the date of this declaration, or after Declarant surrenders his rights to annex real property pursuant hereto, whichever is earlier, no real property may be annexed to the property unless such annexation is approved by a two-thirds vote of the members of the Association. The provisions hereof shall be expressly subject to the provisions of Article XI of this Declaration.

9.02                    **Construction and Sale Period:** Notwithstanding any provision contained in this Declaration, the By-Laws, Articles of Incorporation, use restrictions, rules and regulations, Design Standards, and any amendments thereto, until Declarant no longer owns any Lots as defined herein, it shall be expressly permissible for Declarant and any builder or developer approved by Declarant to maintain and carry on, upon such portion of the Development as Declarant

may deem necessary, such facilities and activities as may reasonably be required by the Declarant and such builder in the Development, construction, and sales activities related to property subject to this Declaration, including, but without limitation: the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the Development; the right to tie into any portion of the Development with driveways, parking areas and walkways; the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocated, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Development; the right to carry on sales and promotional activities in the Development; and the right to construct and operate business offices, signs, construction trailers, material storage areas, model residences, off-street parking areas, and sales offices. Declarant and any such builder or developer may use residences or offices owned or leased by Declarant or such builder or developer as model residences and sales offices. Rights exercised pursuant to this reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property and damage shall be repaired by the person causing any damage at its sole expense.

## ARTICLE X MISCELLANEOUS

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

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

**10.03            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.

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

**10.05            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 Owner, or any other person, shall be in writing. All such writings shall be sufficient if personally delivered or if deposited in the United States Mail, with sufficient postage, and sent to the following addresses:

Declarant:        Magruder Properties, Inc.  
                     P.O. Box 1597  
                     Lawrenceville, Georgia 30046

Owners: Each owner's address as registered with the Association in accordance with the By-Laws, or if no such address has been registered, at the Owner's last known address.

The Declarant reserves the right to change its address from time to time by filing an amendment to this Declaration specifying its new address in the Deed Records of Gwinnett County, Georgia.

Any written communication mailed in accordance with this Section 10.05 shall be deemed received on the third (3rd) day following the day such written notice is deposited in the United States Mail.

**10.06**            **No Liability:** Declarant has, using best efforts and all due diligence, prepared and recorded this Declaration so that each and every Owner shall have the right and power to enforce the terms and provisions of this Declaration against every other Owner. However, in the event that this Declaration or any provision herein 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 such liability. In addition, neither the Declarant nor the Association shall have any liability of any kind as a result of any failure to enforce any provision contained in this Declaration.

**10.07**            **Insurance:**

(a) At all times during the terms of this Declaration, the Association, its successors and assigns, shall be required to keep any and all recreational facilities and any other improvements located on the Common Property fully insured by a reputable insurance company authorized to transact business in the state of Georgia with (i) fire, vandalism, malicious mischief and extended coverage in an amount adequate to cover the cost of replacement of such improvements in the event of loss of any and/or all of such improvements, fixtures and contents thereof, and (ii) comprehensive general liability insurance covering all of the common Property, including, without limitation, the operation, maintenance or use thereof and improvements and facilities thereon, for at least One Million Dollars (\$1,000,000.00) for bodily injury, including death and property damage, arising out of a single occurrence. Each such policy of insurance shall require that the certificate holders and insured be given thirty (30) days' prior written notice of any cancellation of such policies.

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

Any damage or destruction shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least seventy-five percent (75%) of the total Association vote entitled to vote thereon, and, so long as the Declarant has the right to appoint and remove directors, the Declarant, otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed one hundred and twenty (120) days.

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

the Association.

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

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

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

(e) All insurance coverage required by the Association shall be written in the name of the Association as trustee for the benefit of the Association, the Owners and each such Owner's mortgagee. The Association's Board shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

- (i) a waiver of subrogation by the insurer as to any claims against the Association's Board, its manager, the Owners and their respective tenants, servants, agents, and guests;
- (ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;
- (iii) that no policy may be reduced in amount, canceled, subjected to non-renewal, invalidated, or suspended on account of the act or omission of any one (1) or more individual Owners;
- (iv) that no policy may be reduced in amount, canceled, subjected to non-renewal, invalidated, or suspended on account of any defect or the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Board to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Board its manager, any owner or Mortgagee;
- (v) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and
- (vi) in no event shall the insurance coverage obtained and insured by the Association's Board hereunder be brought into contribution with insurance purchased by individual owners, occupants, or their mortgagees, and the insurance carried by the Association shall be primary.

In addition to the other insurance required by this Section, the Board shall obtain worker's compensation insurance if and to the extent necessary to satisfy the requirements of applicable law.

(f) The Association shall obtain and maintain a blanket fidelity bond for all officers, directors, and employees of the Association and all other persons who handle, or are responsible for, funds of or administered by the Association. If the Association engages a management agent who has responsibility for handling or administering funds of the Association, the management agent shall be required to maintain fidelity bond coverage of its officers, employees and agents handling or administering the funds of the Association. Such fidelity bonds shall name the Association as an obligee and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the management agent at any time during the period of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to three (3) months' aggregate assessments on all Lots plus reserve funds. The bonds shall contain waivers by the issuer of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. The bonds shall provide that they may not be canceled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days' prior notice to the Association.

**10.08** **Variances:** Notwithstanding anything to the contrary contained herein, the Declarant or the Board of Directors of the Association or the designee of either of them shall be authorized to grant individual variances from any of the provisions of this Declaration, the By-Laws, and any rule, regulation, or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Development.

**10.09** **Books and Records:**

(a) **Inspection by Members and Mortgagees.** This Declaration, the Bylaws, copies of rules and use restrictions, membership register, books of account, and minutes of meetings of the members of the Board and of committees shall be made available for inspection and copying by any member of the Association or by his duly appointed representative and by holders, insurers, or guarantors of any first Mortgage at any reasonable time and for a purpose reasonably related to his or her interest as a member or holder, insurer, or guarantor of a first Mortgage at the office of the Association or at such other reasonable place as the Board shall prescribe.

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

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

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

UNCLASSIFIED

## 11.01

(a) As used in this Section, the term "Eligible Holder" shall mean a holder, insurer or guarantor of a first mortgage on a Lot which has requested notice in accordance with the provisions of Section 11.01(b).

(b) A holder, insurer or guarantor of a first mortgage, upon written request to the Association (such request to

- (i) Any proposed amendment of the Declaration effecting a change in (A) the boundaries of any Lot or the exclusive easement rights appertaining thereto; (B) the interests in the Common Property or the liability for common expenses appertaining thereto; (C) the number of votes in the Association appertaining to any Lot; or (D) the purposes to which any Lot or the Common Property are restricted;

(ii) any proposed termination of the administration of the Common Property pursuant to this Declaration;

(iii) any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Lot on which there is a first mortgage held, insured or guaranteed by such eligible Holder;

(iv) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to a first mortgage held by such Eligible Holder which remains uncured for a period of sixty (60) days;

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

(vi) any proposed action which would require the consent of a specified percentage of Eligible Holders, as specified herein; and

(vii) an annual financial statement, or audit if available, of the Association for the immediately preceding fiscal year, free of charge.

(c) To the extent permissible under the law of the State of Georgia, the following provisions shall apply:

(i) Any restoration or repair of the Common Property after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with the Declaration and the original plans

and specifications unless the approval of the Eligible Holders of first mortgages on Lots to which at least fifty-one (51%) percent of the votes of Lots subject to mortgages held by such Eligible Holders are allocated, is obtained.

- (ii) Any election to terminate the administration of the Common Property pursuant to this Declaration after substantial destruction or a substantial taking in condemnation of the Property must require the approval of the Eligible Holders of first mortgages on Lots to which at least fifty-one (51%) percent of the votes of Lots subject to mortgages held by such Eligible Holders are allocated.

(d) the following provisions do not apply to amendments to the constituent documents or termination of the Association pursuant to Section 11.01(c) hereof made as a result of destruction, damage, or condemnation, or to the addition of land pursuant to any plan of expansion or phased development previously approved by the Department of Housing and Urban Development ("H.U.D.") or the Veterans Administration ("V.A.") to the extent such approval is required by H.U.D. or the V.A.:

- (i) The consent of Owners representing at least sixty-seven (67%) percent of the Class "A" votes and of the Declarant, so long as it holds any land subject to this Declaration, and the approval of the Eligible Holders of first mortgages on Lots to which at least sixty-seven (67%) percent of the votes of Lots subject to a mortgage appertain, shall be required to terminate the administration of the Property subject to this Declaration.
- (ii) The consent of Owners representing at least sixty-seven (67%) percent of the Class "A" votes and of the Declarant, so long as it holds any land subject to this Declaration, and the approval of Eligible Holders of first mortgages on Lots to which at least fifty-one (51%) percent of the votes of Lots subject to a mortgage appertain, shall be required to materially amend any provisions of this Declaration, the By-Laws or the Articles of Incorporation to add any material provisions thereto, which establish, provide for, govern or regulate any of the following:
  - (A) Voting;
  - (B) Assessments, assessment liens or subordination of such liens;
  - (C) Reserves for maintenance, repair and replacement of the common Property;
  - (D) Insurance or fidelity bonds;
  - (E) Rights to use of the Common Property;
  - (F) Responsibility for maintenance and repair of the several portions of the property;
  - (G) Expansion or contraction of the Property or the addition, annexation or withdrawal of land to or from the Property;

- (H) Boundaries of any Lot;
- (I) Convertibility of Lots into Common Property or of Common Property into Lots;
- (J) Leasing of Lots;
- (K) Imposition of any right of first refusal or similar restriction on the right of a Lot owner to sell, transfer, or otherwise convey is or her Lot;
- (L) Establishment of self-management by the Association where professional management, if any, has been employed;
- (M) The approval of Eligible Holders of first mortgages on Lots to which at least fifty-one (51%) percent of the votes of Lots subject to a mortgage appertain, shall be required to amend any provisions included in this Declaration, the By-Laws or the Articles of Incorporation which are for the express benefit of holders or insurers of first mortgages on Lots.

(e) The provisions of this Section shall not be construed to reduce the percentage vote that must be obtained from mortgagees of Lot Owners where a larger percentage vote is otherwise required by applicable law or in any other provision in the Declaration, the By-Laws or the Articles of Incorporation for any of the actions contained in this Section.

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

- (a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the common Property which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the common Property shall not be deemed a transfer within the meaning of this subsection);
- (b) Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Residence;
- (c) By act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Lots and Residences and of the Common Property (the issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this subsection);
- (d) Fail to maintain insurance, as required by this Declaration; or
- (e) Use hazard insurance proceeds for any Common Property losses for other than the repair, replacement, or reconstruction of such property.

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

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

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

**11.05**            **Amendment By Board:** Should the Department of Housing and urban Development ("H.U.D."), the Veterans Administration ("V.A."), the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this article or make any such requirements less stringent, the Board, without approval of the owners may cause an amendment to this article to be recorded to reflect such changes.

**11.06**            **V.A. and H.U.D. APPROVAL:** As long as there is a Class B membership, the following actions shall require the prior approval of the V.A. so long as the V.A. is guaranteeing any mortgage in the property and the prior approval of H.U.D. so long as H.U.D. is insuring any mortgage in the property: Annexation of additional land to the Property, except for annexation by Declarant in accordance with Article IX pursuant to a plan of annexation previously approved by the V.A., or H.U.D.; dedication of Common Property to any public entity; and material amendment to the Declaration, By-Laws or Articles of Incorporation.

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


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

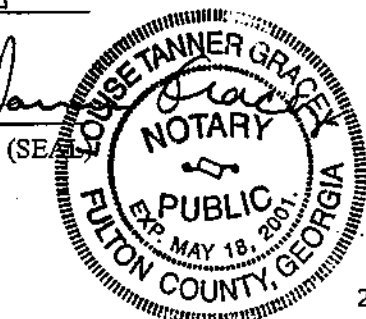
IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed and sealed as of the day and year first above written.

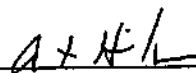
Signed, sealed and delivered  
in the presence of:

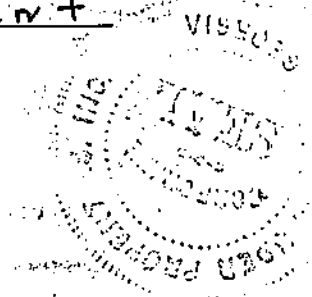
MAGRUDER PROPERTIES, INC.

  
Unofficial Witness

  
Notary Public



By:  (SEAL)  
Name: ART HICKSON  
Title: PRESIDENT



## ASSOCIATION ACKNOWLEDGEMENT AND CONSENT

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

IN WITNESS WHEREOF, the Association, acting through its duly authorized Officers, has caused this Declaration to be executed and sealed as of the 8<sup>th</sup> day of MARCH, 2001.

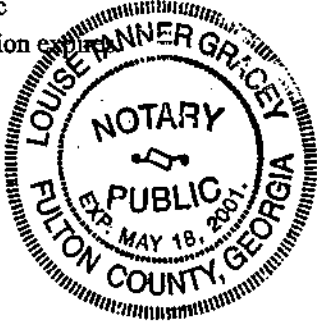
Signed, sealed and delivered  
in the presence of:

MAGRUDER CROSSING  
HOMEOWNER'S ASSOCIATION, INC.

[Signature]  
Unofficial Witness

By: [Signature] (SEAL)  
Art Hickson, President

[Signature]  
Notary Public  
My commission expires



## EXHIBIT "A"

## LEGAL DESCRIPTION

ALL THAT TRACT or parcel of land lying and being in Rocky Creek District (G.M.D. 1587), Gwinnett County, Georgia, being shown as Tract 1 containing 38.443 acres on a Plat of Survey for Magruder Properties, Inc. by The Northland Company, Inc. (William C. Ellis, GRLS No. 2450) dated January 31, 2000, and being more particularly described according to said plat as follows:

BEGINNING at the point of intersection of the South right of way line of Georgia Highway No. 324 (a 60-foot right of way) with the Northeast right of way line of Bailey Woods Road (a 60-foot right of way); run thence East along the South right of way line of Georgia Highway No. 324, and following the arc of a curve to the left, having a radius of 449.72 feet, and a chord of North 82 degrees 44 minutes 41 seconds East 121.45 feet, a distance of 121.82 feet to a point; continue thence Northeast along said right of way along the arc of a curve to the left, having a radius of 737.01 feet and a chord of North 65 degrees 44 minutes 04 seconds East 188.90 feet, a distance of 189.42 feet to a point; continue thence along said right of way North 58 degrees 20 minutes 26 seconds East 337.50 feet to a point; run thence Northeast along said right of way along the arc of a curve to the right, having a radius of 1780.10 feet, and a chord of North 64 degrees 42 minutes 51 seconds East 344.10 feet, a distance of 344.64 feet to a point; run thence along said right of way North 70 degrees 12 minutes 43 seconds East 241.95 feet to a point marked by an iron pin set; thence leaving said right of way, run South 18 degrees 23 minutes 21 seconds East 176.72 feet to an iron pin set; run thence South 07 degrees 01 minutes 50 seconds West 300.00 feet to an iron pin set; run thence South 85 degrees 45 minutes 38 seconds East 625.11 feet to a point marked by an iron pin set; run thence South 07 degrees 25 minutes 38 seconds East 1161.42 feet to a point marked by an iron pin found; run thence along property now or formerly owned by Cleghorn South 56 degrees 20 minutes 30 seconds West 384.05 feet to a corner marked by an iron pin and a rock; run thence along the line of property now or formerly owned by Cleghorn North 39 degrees 55 minutes 53 seconds West 1373.62 feet to a corner in the center of a rock pile; run thence South 53 degrees 57 minutes 05 seconds West 623.63 feet to a point marked by an iron pin set on the East right of way line of Bailey Woods Road; run thence Northerly along said right of way line, and following the arc of a curve having a radius of 15,711.57 feet, and a chord of North 10 degrees 18 minutes 01 seconds West 293.71 feet, a distance of 293.71 feet to a point; continue thence Northerly along said right of way, and following the arc of a curve to the left, having a radius of 1116.32 feet and a chord of North 20 degrees 52 minutes 19 seconds West 430.11 feet, a distance of 432.82 feet to the point of intersection of the East right of way line of Bailey Woods Road with the South right of way line of Georgia Highway No. 324, WHICH IS THE TRUE PLACE OR POINT OF BEGINNING.

**BY-LAWS OF  
MAGRUDER CROSSING HOMEOWNER'S ASSOCIATION, INC.**

**ARTICLE I  
NAME AND LOCATION**

The Name of the Association is **MAGRUDER CROSSING HOMEOWNER'S ASSOCIATION, INC.** (hereinafter referred to as the "Association"). The principal office of the Association (until otherwise designated by the Board) (as hereinafter defined) shall be located at 11 Lumpkin Street, Suite 150, Lawrenceville, Georgia 30046, but meetings of Members and directors may be held at such other places within the State of Georgia, as may be designated by the Board.

**ARTICLE II  
DEFINITIONS**

Unless otherwise set forth herein, the terms used in these By-Laws shall have the same meanings ascribed to such terms as set forth in the Declaration of Covenants, Restrictions, and Easements for **MAGRUDER CROSSING HOMEOWNER'S ASSOCIATION, INC.**, dated as of February 15, 2001, which has been executed by Art Hickson with respect to a community known as **MAGRUDER CROSSING**, and is to be executed by duly authorized officers of the Association, and is to be filed for record in the Office of the Clerk of the Superior Court of Gwinnett County, Georgia as such Declaration may be amended from time to time, and which Declaration is incorporated herein by reference.

**ARTICLE III  
MEETINGS**

3.1 **Annual Meetings of Members:** The regular annual meeting of the Members shall be held not later than six (6) months past the end of the fiscal year of the Association, on a date (which is not a legal holiday) and at such place within the State of Georgia, as shall be designated in the call of meetings pursuant to Section 3.3 below. If no such date is designated, the annual meetings shall be held on the First Monday in February, if not a legal holiday, and if a legal holiday, then the next business day succeeding. The Members shall, at such annual meeting, elect a Board of Directors for the ensuing year, in the manner provided in Article IV hereof, and shall have authority to transact any and all business which may be brought before such meeting.

3.2 **Special Meeting of Members:** Special meetings of Members shall be held at such place within the State of Georgia as shall be designated in the call of the meeting. Special meetings may be called by the President at any time and must be called by the President when so requested in writing by any two (2) Directors or by twenty-five (25%) percent of the Class A Membership.

3.3 **Notice of Meetings:** Written notice of the place, date, and time of every annual or special meeting of Members shall be mailed to each Member, at least fifteen (15) days before such meetings. Each

Member shall register his address with the Association, and notices of meetings shall be mailed to him at such address, and if no such address has been registered, at the last known address of the Member. If for a special meeting, such notice shall state the object or objects of the meeting. It shall not be necessary that notice of an annual meeting specify the business to be transacted at such meeting, but such notice shall specify the number of Directors to be elected at such annual meeting.

3.4 **Quorum:** Unless otherwise provided in the Declaration, a quorum at any meeting of members, whether annual or special, shall consist of the presence at such meeting, in person or by proxy, of Members entitled to cast one-third (1/3rd) of the votes of each Class of Membership. Unless otherwise provided in the articles of Incorporation of the Association, or in the Declaration, or in these By-Laws, a majority of the votes entitled to be cast by all Members present at a meeting shall be necessary and sufficient to decide and at upon any question which shall come before the meeting. No business shall be transacted at any meeting unless a quorum is present.

3.5 **Voting:** Voting rights of Members shall be as set forth in the Declaration. Where any Member is a group or entity other than one individual person, the vote on behalf of such Member shall be exercised by only such individual person as shall be designated in a proxy instrument duly executed by or on behalf of such Member, and delivered to the Secretary of the Association.

#### ARTICLE IV DIRECTORS

4.1 **Number:** The affairs of the Association shall be managed by an initial Board of one (1) Director, who need not be a Member of the Association, and who shall be appointed and removed in accordance with Section 3.08 of the Declaration. The Board shall be increased as provided in Section 4.2 hereof, and once the control of the Association passes to the Class A Members, as provided in the Declaration, the affairs of the Association shall be managed by a Board of not less than five (5) nor more than nine (9) Directors.

4.2 **Terms of Office:** At the first annual meeting after control of the Association has passed to the Class A membership, the Board shall be increased to five (5) Directors in accordance with the following procedure. At that meeting, the Members shall elect two (2) Directors to serve a two (2) year term, and three (3) Directors to serve a one (1) year term. All Directors shall hold office until their successors have been elected. The number of Directors may be increased by amendment to this provision of the By-Laws.

4.4 **Compensation:** No Director shall receive compensation for any service he may render to the Association. However, any Director may be reimbursed for his actual expenses incurred in the performance of his duties.

4.5 **Action Taken without a Meeting:** The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

4.6 **Nomination:** Nomination for elected members to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall, in its discretion, determine, but not less than the number of vacancies that are to be filled.

4.7 **Election:** Election to the Board of Directors shall be by secret written ballot. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

4.8 **Regular Meetings of Directors:** Regular meetings of the Board of Directors shall be held monthly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should such meeting fall upon a legal holiday, then the meeting shall be held at the same time on the next day which is not a legal holiday.

4.9 **Special Meetings of Directors:** Special meetings of the Board of Directors shall be held at such place within the State of Georgia as shall be designated in the call of such meetings. Special meetings of the board of Directors may be called by the President at any time, in his discretion, and must be called by the president whenever so requested in writing by two (2) members of the Board of Directors.

4.10 **Notice of Meetings:** Notice of special meetings of the Board of Directors shall be given by the President or the Secretary to each member of the board, not less than three (3) days before the time at which meetings are to convene. Said notices may be given by telephone, or by any other form of written or verbal communication. It shall not be necessary for notices of special meetings of the Board of Directors to state the purposes or objects of the meeting. Action may be taken by the Directors without a meeting if such action is consented to in writing by all of the Directors.

4.11 **Quorum:** A quorum at any meeting of the Board of Directors shall consist of a majority of the Members of the Board. Unless otherwise provided in the Articles of Incorporation of the Association, or in these By-Laws, or in the Declaration, a majority of those present at any meeting at which a quorum is present may decide all questions which may come before the meeting.

4.12 **Powers:** The Board of Directors shall have power to:

- (a) Adopt and publish rules and regulations governing the use of the common Property and Facilities, and the personal conduct of the members and their guests thereon, and to establish penalties for

the infraction thereof;

- (b) Suspend the voting rights and right to use of the recreational facilities of a Member during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations;
- (c) Exercise for the Association all powers, duties, and authority vested in or delegated to the Association and not reserved to the Membership by other provisions of these By-Laws, the Articles of Incorporation, or the Declaration;
- (d) Declare the office of a Member of the Board of Directors to be vacant in the event such Member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and
- (e) Employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

4.13 **Duties:** it shall be the duty of the Board of Directors to:

- (a) Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members, or at any special meeting when such statement is requested in writing by one-fourth (1/4th) of the class A members who are entitled to vote;
- (b) Supervise all officers, agents, and employees of the Association, and see that their duties are properly performed;
- (c) As more fully provided in the Declaration:
  - (1) fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period;
  - (2) Send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period; and
  - (3) Foreclose the lien against any property for which assessment not paid within thirty (30) days after the due date or bring an action at law against the Owner personally obligated to pay the same;
- (d) Issue, or cause an appropriate officer to issue, upon demand by any person, a certificate setting

forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

- (e) Procure and maintain adequate insurance on property owned by the Association, as provided in the Declaration;
- (f) Cause all officers or employees having fiscal responsibilities to be bonded, as required by the Declaration; and
- (g) Cause the Association to carry out all of its duties and obligations under the Declaration.

## ARTICLE V OFFICERS AND THEIR DUTIES

5.1 **Enumeration of Officer:** The officers of this Association shall be a President and Vice-president, who shall at all times be members of the Board of Directors, a Secretary and a Treasurer, and such other officers as the Board may, from time to time, by resolution create.

5.2 **Election of Officers:** The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

5.3 **Term:** The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

5.4 **Special Appointments:** The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

5.5 **Resignation and Removal:** Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of 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.

5.6 **Vacancies:** A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

5.7 **Multiple Offices:** The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other officers except in the case of special offices created pursuant to Section 5.4 of this Article.

5.8 **Duties:** The duties of the Officers are as follows:

- (a) **President:** The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the board are carried out; shall sign all leases, mortgages, deeds, and other written instruments and shall co-sign all checks and promissory notes.
- (b) **Vice-President:** The vice-president shall act in the place and stead of the President in the event of his absence, inability, or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.
- (c) **Secretary:** The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the Members keep appropriate current records showing the Members of the Association, together with their addresses; and shall perform such other duties as required by the Board.
- (d) **Treasurer:** The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the Membership at its regular annual meeting, and deliver a copy of each to the Members.

## ARTICLE VI SEAL

6.1 **Corporate Seal:** The Corporate seal of the Association shall be in the following form, to-wit:

and the seal in such form is hereby adopted as the Corporate Seal of the Association.

## ARTICLE VII MISCELLANEOUS

7.1 **The Declaration:** All provisions contained in the Declaration with regard to rights, powers, and duties of the Association, the Members thereof (including, without limitation, classes of members and

qualifications and rights of the members of each class), and the Board of Directors thereof, are hereby incorporated into these By-Laws by this reference, with the same effect as if such provisions were fully set forth herein.

7.2 **Committees:** The Board of Directors of the Association shall appoint Committees as specifically provided for in the Declaration and in these By-Laws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purposes.

7.3 **Books and Records:** The books and records of the Association shall, at all times, during reasonable business hours, be open for inspection by any Member of the Association and any institutional holder, insurer or guarantor of a first mortgage.

7.4 **Indemnification:** The Association shall indemnify any person made a party to any action, suit, or proceeding, whether civil or criminal by reason of the fact that he, his testator, or intestate, is or was a director, officer, or employee of the Association, against the reasonable expenses, including attorneys' fees, actually and reasonably incurred by him in connection with the defense of the action, suit, or proceeding or in connection with any appeal in it. This right of indemnification shall not apply in relation to matters as to which the director, officer, or employee shall be adjudged in the action, suit, or proceeding to be liable for negligence or misconduct in the performance of any duty to the Association. The right to indemnification conferred by this section shall not restrict the power of the Association to make any other indemnification permitted by law.

7.5 **Fiscal Year:** The fiscal year of the Association shall be determined by resolution of the Board. In the absence of such a resolution, the fiscal year shall be the calendar year.

7.6 **Parliamentary Rules:** "Robert's 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, these By-Laws, or a ruling made by the person presiding over the proceeding.

7.7 **Conflicts:** If there are conflicts or inconsistencies between the provisions of Georgia law, the Articles of Incorporation, the Declaration, or these By-laws, then the provisions of Georgia Law, the Declaration, the Articles of Incorporation, and these By-laws (in that order) shall prevail.

7.8 **Notices:** Unless otherwise specified in the Declaration or By-laws, all notices, demands, bills, statements, or other communications required or permitted to be sent under the Declaration or these By-laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by first class mail, postage prepaid:

- (a) If to a member at the address which the Member has registered in writing and filed with the Secretary, or, if no such address has been registered, at the last known address of the Member; or

- (b) If to the Association, the Board of Directors, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated by notice in writing to the Members.

If there are multiple Owners of a single piece of property, notice to one (1) shall be deemed to be notice to all.

7.9 **Amendment:** The provisions of the Declaration applicable to amendment of that instrument shall apply to any amendment to these By-Laws.

7.10 **Fining Procedure:** The Board shall not impose a fine (a late charge shall not constitute a fine) unless and until the following procedure is followed:

- (a) **Demand:** Written demand to cease and desist from an alleged violation shall be served upon the alleged violator specifying:
- (i) the alleged violation;
  - (ii) the action required to abate the violation; and
  - (iii) a time period, not less than ten (10) days, during which the violation may be abated without further sanction, if such violation is a continuing one, or a statement that any further violation of the same rule may result in the imposition of a fine, if the violation is not a continuing one. The Board or its designee may demand immediate abatement in such circumstances which, in the Board's determination, pose a danger to safety or property.
- (b) **Notices:** within twelve (12) months of such demand, if the violation continues past the period allowed in demand for abatement without penalty, or if the same rule is subsequently violated, the Board may, upon notice, impose a fine. The notice shall state:
- (i) the nature of the alleged violation;
  - (ii) that the alleged violator may, within ten (10) days from the date of the notice, request a hearing regarding the fine;
  - (iii) that any statement, evidence, and witnesses may be produced by the alleged violator at the hearing; and
  - (iv) that all rights to have the fine reconsidered are waived if a hearing is not requested within ten (10) days of the date of notice.

- (c) **Hearing:** If a hearing is requested, it shall be held before the Board in an executive session, and the alleged 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.

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

Signed, sealed and delivered  
in the presence of:

MAGRUDER PROPERTIES, INC.

By: Art Hickson (SEAL)

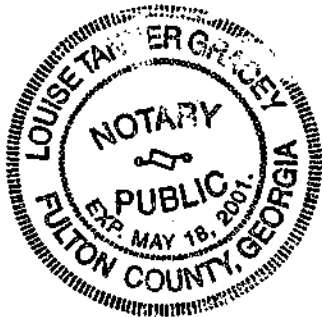
Name: ART HICKSON

Title: PRESIDENT

Delroy March  
Unofficial Witness

Laurie Ann Gracey  
Notary Public

(SEAL)



## ASSOCIATION ACKNOWLEDGEMENT AND CONSENT

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

IN WITNESS WHEREOF, the Association, acting through its duly authorized Officers, has caused this Declaration to be executed and sealed as of the 8<sup>th</sup> day of MARCH, 2001.

Signed, sealed and delivered  
in the presence of:

MAGRUDER CROSSING  
HOMEOWNER'S ASSOCIATION, INC.

[Signature]  
Unofficial Witness

By: [Signature] (SEAL)  
Art Hickson, President

[Signature]

Notary Public

My commission expires:

