

**DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR BRIGHT WATER SUBDIVISION**

THIS DECLARATION is made this the 25<sup>th</sup> day of November, 1997, by BRIGHT WATER DEVELOPMENT CO., LLC (hereinafter called the "Declarant").

W I T N E S S E T H

WHEREAS, Declarant is the owner and developer of certain real property located in Gwinnett County, Georgia and more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "Property"), which Property is being developed by Declarant as a residential community known as Bright BrightWater (the "Subdivision"), being comprised of all of those certain lots, tracts or parcels of land lying and being in Land Lots 22 and 43 of the 5th Land District, of Gwinnett County, Georgia; and

WHEREAS, it is to the interest, benefit and advantage of Declarant and each and every person who shall hereafter purchase any lot in the Subdivision (hereinafter referred to in the singular as a "Lot" and in the plural as "Lots") that certain protective covenants governing and regulating the use and occupancy of the Subdivision be established, set forth and declared to be covenants running with the land; and

WHEREAS, Declarant deems it desirable to create the Association (as hereinafter defined) to enforce and administer this Declaration and to insure the enjoyment of the Lots by the owners thereof; and WHEREAS, Declarant intends that every Owner (as hereinafter defined) of a Lot does automatically and by reason of such ownership, and by reason of this Declaration, become a member of the Association and subject to its rules and regulations and subject to the assessment by the Association pursuant hereto.

NOW, THEREFORE, for and in consideration of the premises and of the benefits to be derived by Declarant and each and every Owner of any of the Lots, Declarant hereby subjects the Property to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth and declares that all of the Property shall be held, sold and conveyed subject to such covenants, conditions, restrictions, easements, charges and liens, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision. Subject to the rights of Declarant, such covenants, conditions, restrictions, easements, charges and liens shall run with the Property, and be binding on all parties having or acquiring any right, title or interest in the Property, or any part thereof, and shall inure to the benefit of each Owner.

**ARTICLE 1  
Definitions**

*Definitions.* In addition to all other terms used and defined herein, the following terms when used in this Declaration, or any amendment or supplement hereto (unless the context shall clearly indicate to the contrary) shall have the following meaning:

(a) "Act" shall mean and refer to the Georgia Property Owners' Association Act (O.C.G.A. § 44-3-220 et seq.), as amended.

(b) "Additional Declaration" shall mean and refer to any declaration of residential covenants, conditions, restrictions and/or easements filed with the Clerk of the Superior Court of Gwinnett County, Georgia with regard to a certain Phase.

(c) "Architectural Control Committee" shall mean and refer to the committee appointed by the Board to oversee the development and enforcement of architectural control standards and restrictions with respect to the Property and to perform certain other functions described in this Declaration as more particularly described in Article 3, Section 2, Section 16 and Section 15.7 of this Declaration.

(d) "Architectural and Design Guidelines" shall have the meaning assigned to that term in Article 3, Section 17(a) of this Declaration.

(e) "Architectural and Landscape Guidelines" shall have the meaning assigned to that term in Article 3, Section 17(d) of this Declaration.

(f) "Association" shall mean and refer to the Brightw Water Homeowners' Association, Inc., a nonprofit corporation organized and existing under the laws of the State of Georgia.

- (g) "Association Documents" shall mean and refer to the articles of incorporation and bylaws of the Association.
- (h) "Board" shall mean and refer to the Board of Directors of the Association.
- (i) "Common Area" or "Common Areas" shall mean and refer, singularly or collectively, applicable, to all land, improvements and other properties which hereafter shall be deeded to or acquired by, in fee, from time to time by the Association for the common use and enjoyment of the Owners including, without limitation, that property identified and designated as "Common Area" on any Plat.
- (j) "Covenants and Restrictions" shall mean and refer to all covenants, restrictions and easements set forth in this Declaration.
- (k) "Declarant" shall have the meaning assigned to that term in the preamble of this Declaration.
- (l) "Entrance Monuments" shall mean and refer to any monuments erected by Declarant in the areas designated as "Entrance Monument" on any Plat.
- (m) "Landscape Guidelines" shall have the meaning assigned to that term in Article 3, Section 17(b) of this Declaration.
- (n) "Lot" shall have the meaning assigned to that term in the preamble.
- (o) "Mortgage" shall mean and refer to any security deed or deed to secure debt by means of which title to any Lot is conveyed or encumbered to secure a debt.
- (p) "Owner" shall mean and refer to any Person (as hereinafter defined) who is or shall be a record owner by purchase, transfer, assignment or foreclosure of a fee or undivided fee interest in a Lot; provided, however, that any Person who holds such interest merely as security for the performance of an obligation shall not be an Owner.
- (q) "Person" shall mean and refer to any natural person, corporation, general partnership, limited partnership, limited liability company, limited liability partnership, joint venture, association or any other such entity.
- (r) "Phase" shall mean and refer to any phase, section or portion of the Property for which a separate Plat or Plats are recorded with the Clerk of Superior Court of Gwinnett County, Georgia.
- (s) "Plat" shall mean and refer to any plat of the Property, or any part of it, which is recorded from time to time with the Clerk of the Superior Court of Gwinnett County, Georgia.
- (t) "Property" shall have the meaning assigned to that term in the preamble of this Declaration.
- (u) "Recreation Area" shall mean and refer to any portion of the Property designated as "Recreation Area" on any Plat.
- (v) "Subdivision" shall have the meaning assigned to that term in the preamble of this Declaration.

## ARTICLE 2

### Property Subject to Declaration and to the Act; Effect Thereof.

#### **Section 1.** *Property Hereby Subjected to this Declaration.*

This Declaration is hereby imposed upon the Property and Declarant hereby subjects the Property to this Declaration, which shall hereafter be held, transferred, sold, conveyed, used, leased, occupied and mortgaged or otherwise encumbered subject to this Declaration.

#### **Section 2.** *All Lots Bear the Burden, and Enjoy the Benefits, of This Declaration.*

Every Owner shall be deemed, by taking record title to a Lot, to agree to and be bound by all of the terms and provisions of this Declaration.

#### **Section 3.** *The Act.*

The Property is hereby made subject to the Act.

#### **Section 4.** *Additional Declarations.*

In addition to the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration, Declarant shall have the right at its election without the consent of any Owner or Owners, to subject any Phase of the Property owned by the Declarant to additional controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens by filing an Additional Declaration with the Clerk of Superior Court of Gwinnett County, Georgia covering only such Phase. The Association shall have the right and authority to enforce all controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens imposed by such Additional

Declaration and any amendments thereto, whether or not such right and authority is expressly provided for in such Additional Declaration.

### **ARTICLE 3**

#### **Use and Development Restrictions**

##### ***Section 1. Land and Use and Building Type.***

Each Lot shall be used exclusively for single-family, nontransient residential purposes; provided, however, that Declarant shall have the right to use Lots from time to time for the purpose of construction and operation of construction offices and sales/marketing offices (and related uses) for the Subdivision. No trade, business or business activity of any kind shall be conducted on a Lot or any part thereof except by Declarant as described hereinabove or except with the written approval of the Board. No building shall be erected, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling unit not to exceed thirty-five (35) feet in height.

##### ***Section 2. Architectural Control.***

(a) Declarant hereby reserves the right to approve or disapprove (i) the building plans and specifications for any new building or structure to be erected upon any Lot; and (ii) the standards, methods and procedures for landscaping, landscape management and landscape maintenance on the Property.

(b) The Architectural Control Committee is hereby granted the authority to (i) approve or disapprove the plans and specifications for construction of any exterior addition to, change in, or alteration of any building or structure already located on a Lot or the reconstruction of any building or structure; and (ii) the standards, methods and procedures for landscaping, landscape management and landscape maintenance in the Subdivision.

(c) Before any residence, garage, playhouse, out-building, greenhouse, fence, wall, or other structure, or exterior addition to, change in, or alteration of any such structure or reconstruction of such structure shall be commenced, erected, altered or maintained upon any Lot, complete final building plans and No building shall be erected, placed or altered on any Lot until the construction plans and specifications and plans showing location of the structure have been approved by specifications, including, but not limited to, specifications of materials, shall have been submitted to Declarant or the Architectural Control Committee, as described in Section 15 below, as to quality of workmanship and materials, harmony of external design appropriate, with one copy to be retained by Declarant or the Architectural Control Committee, as appropriate, for its records, and such plans and specifications shall include the following information, where applicable:

- (1) building plans showing floor plans and front, side and rear elevations;
- (2) exterior finish schedule showing material, style, and color for all surfaces;
- (3) site plan showing location of building, drives, parking area, sidewalks, and all other improvements;
- (4) clearing, grading and drainage plan showing limits of clearing, changes in grade and provisions of water retention facilities, including silt control both during and after construction;
- (5) landscape plan which must include automatic lawn sprinkling system (which may be submitted after construction commences, but must be approved by Declarant or Architectural Control Committee, as appropriate, and implemented before occupancy); and
- (6) name of builder.

existing structures and as to location with respect to topography and finished grade elevation. No fence or walls shall be erected, placed or altered on any Lot nearer to any street than the minimum building set-back line unless similarly approved. All approvals contemplated by this paragraph shall be requested and given (or denied) as provided in Section 16 below.

##### ***Section 3. Dwelling Quality and Size.***

It is the intention and purpose of this covenant to assure that all dwellings shall be of a high and substantially similar quality of workmanship and materials. The first floor area of the

main structure of any one-story dwelling permitconstructed on any Lot, exclusive of one--story open porches and garages, shall be not less than twenty-two hundred (2,200) square feet. The total floor area of the main structure of any two-story dwelling constructed on any Lot, exclusive of one-story open porches and garages, shall be as follows: (a) not less than twenty-two hundred (2,200) square feet for any Lot lying within any "Area A" designated on a Plat; (b) not less than twenty-four hundred (2,400) square feet for any Lot lying within any "Area B" designated on a Plat; (c) not less than twenty-seven hundred (2,700) square feet for any Lot lying within any "Area C" designated on a Plat; and (d) not less than twenty-eight hundred (2,800) square feet for any Lot lying within any "Area D" designated on a Plat. The roof on the main structure of each dwelling constructed on a Lot, as viewed from the front elevation, shall have a 10/12 pitch; furthermore, each dwelling constructed on a Lot shall have nine (9) foot ceilings on the first floor. Additional restrictions and requirements for dwellings constructed in the Subdivision may be specified on the Plat or in zoning conditions applicable to the Property, from time to time; all such additional restrictions and requirements are incorporated herein by this reference.

***Section 4. Building Location.***

No building shall be located on any Lot nearer to the front line of the Lot or nearer to the side street line than the minimum building set-back lines shown on the Plat. In any event, no building shall be located on any Lot nearer than thirty (30) feet to the front line of the Lot, without the prior written approval of Declarant or the Architectural Control Committee, as appropriate. For the purposes of this covenant, eaves, steps, carports and open porches shall not be considered as part of a building; provided, however, that this shall not be construed to permit any portion of a building on a Lot to encroach upon another Lot.

***Section 5. Lot Area and Width; Lot Boundary Lines.***

No dwelling shall be erected or placed on any Lot having a width of less than (80) feet at the minimum building set-back line, except in cul-de-sac lots, nor shall any dwelling be erected or placed on any Lot having an area of less than ten thousand five hundred (10,500) square feet. Lots shall not be subdivided, and the boundaries between Lots shall not be relocated, unless the relocation thereof is made with the consent of at least a majority of the Owners in the Subdivision and of Declarant, so long as Declarant owns a Lot primarily for the purpose of sale; provided, however, that Declarant shall have the right for so long as Declarant owns any Lot primarily for the purpose of sale to make changes in the location of the boundaries of (i) any Lots owned by Declarant, (ii) the Common Areas, (iii) the Recreation Area, and (iv) any portion of the Property owned by Declarant.

***Section 6. Easements.***

Easements for installation and maintenance of utilities and drainage facilities shall be reserved as shown on the Plat and over the rear (15) feet of each Lot. Drainage flow shall not be obstructed nor diverted by any Owner from drainage or utility easements as designated above or on the Plat; provided, however, that Declarant shall have the right, so long as Declarant owns any Lot, to obstruct or divert said drainage or utility easements affecting any Lot owned by Declarant, provided that such obstruction or diversion by Declarant does not unreasonably affect any Lot in the Subdivision owned by an Owner other than Declarant.

***Section 7. Nuisances.***

No noxious or offensive activities shall be carried on or upon any Lot; nor shall anything be done on or upon any Lot which may be or may become an annoyance or a nuisance to any other portion of the Property.

***Section 8. Vehicles.***

Adequate off-street parking shall be provided by the Owner of each Lot for parking, and no Owner shall park all or any vehicle(s) on the streets of the Subdivision as a matter of course. Enclosed parking shall be provided for a minimum of two (2) cars on each Lot. Other vehicles, including, without limitation, trucks, motorcycles, campers, vans, trailers, motor homes, boats, and recreational vehicles may be parked on the Owner's Lot only if

parked in screened areas as approved by the Declarant or the Architectural Control Committee, as appropriate, which screening shall conceal the vehicles from view from streets and from any other Lot(s). No Owners or other occupants of any portion of the Property shall repair or restore any vehicle of any kind upon or within any Lot or within any portion of the Common Areas, except (i) within enclosed garages or workshops or (ii) for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility. Declarant hereby reserves the right (without any obligation to do so) to designate a portion of the Common Areas as a parking area for boat trailers, motor homes, and similar vehicles.

**Section 9. Temporary Structures.**

No structure of a temporary character, trailer, mobile home, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently, permitted on any Lot at any time with the exception of: (i) temporary buildings, trailers or mobile units used for construction purposes during the construction period of a residence on such Lot, or (ii) a temporary real estate sales office maintained by Declarant or Declarant's designated agent for the sale of Lots or homes in the Subdivision.

**Section 10. Clotheslines**

No clothesline of any kind shall be displayed to the public view on any Lot.

**Section 11. Signs.**

No sign of any kind shall be displayed to the public view on any Lot except for one (1) sign of not more than (4) square feet advertising such Lot for sale or rent or signs used by a builder to advertise the Lot during the construction and sales period or to advertise an established model home.

**Section 12. Oil and Mining Operations.**

No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot; nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

**Section 13. Animals.**

No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept,; provided that they are not(i) not more than four (4) pets may be kept on any single Lot, and (ii) no such pets shall be kept, bred or maintained for any commercial purposes.

**Section 14. Garbage and Refuse Disposal.**

No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All containers, incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

**Section 15. Sight Distance at Intersections.**

No fence, wall, hedge or shrub planting intersections shall be permitted in or around any street intersections in the Subdivision (including driveway connections to said streets), unless the foliage line is maintained at a sufficient height, in the sole judgment of Declarant or the Architectural Control Committee, as appropriate, to prevent obstruction of such sight lines.

**Section 16. Architectural Approval Process.**

The Architectural Control Committee shall be composed initially of three (3) members appointed by Declarant. The majority of the Architectural Control Committee may designate a representative to act on behalf of the Architectural Control Committee. In the event of the death or resignation of any member of the Architectural Control Committee, the remaining members shall have full authority to designate a successor. Neither the members of the Architectural Control Committee, nor its designated representative, shall be entitled to any compensation for services performed pursuant to this instrument. The approval or disapproval of Declarant and the Architectural Control Committee as required by this

instrument shall be in writing. In the event Declarant or the Architectural Control Committee (or its designated representative) fail to approve or disapprove plans and specifications within thirty (30) days after such plans and specifications shall have been submitted, then the approval of Declarant or the Architectural Control Committee, as appropriate, shall be deemed to have been given and compliance with the related covenants shall be deemed to have been made.

**Section 17. Architectural and Landscape Guidelines.**

- (a) The Architectural Control Committee shall, from time to time, publish and promulgate architectural and design guidelines (the "Architectural and Design Guidelines"). The Architectural and Design Guidelines shall be explanatory and illustrative of the general intent of the development of the Property and are intended as a guide to assist the Architectural Control Committee in reviewing plans and specifications for improvements (excluding only landscape improvements, which are addressed below). The Architectural and Design Guidelines shall also set out, among other things, the procedures for submission, review and approval of plans and specifications (for the construction of non-landscape improvements) to the Architectural Control Committee and the fees to be imposed by the Architectural Control Committee. In any event, the Architectural and Design Guidelines shall not be binding upon the Architectural Control Committee, may be revised and amended at any time by the Architectural Control Committee, in its sole discretion, and shall not constitute, in every event, the basis for approval or disapproval of plans, specifications and other materials (for the construction of non-landscape improvements) submitted to the Architectural Control Committee for approval.
- (b) The Architectural Control Committee shall, from time to time, publish and promulgate landscape guidelines (the "Landscape Guidelines"). The Landscape Guidelines shall be explanatory and illustrative of the general intent of the landscape development of the Property and are intended as a guide to assist the Architectural Control Committee in reviewing plans and specifications for landscape improvements. The Landscape Guidelines shall also set out, among other things, the procedures for submission, review and approval of landscape plans and specifications to the Architectural Control Committee and the fees to be imposed by the Architectural Control Committee). In addition, the Landscape Guidelines shall establish approved standards, methods and procedures for landscaping, landscape management and landscape maintenance in the Property, including the removal of trees. Such authorized standards, methods and procedures shall be utilized by Owners and their contractors and subcontractors, and the approval by the Architectural Control Committee of any landscaping plan or other landscaping improvement in connection with landscaping on a Lot, or other portion of the Property shall be based upon the conformity of such plan or improvement with the Landscape Guidelines. In any event, the Landscape Guidelines shall not be binding upon the Architectural Control Committee, may be revised and amended at any time by the Architectural Control Committee, in its sole discretion, and shall not constitute, in every event, the basis for approval or disapproval of landscaping plans, specifications and other materials submitted to the Architectural Control Committee for approval.
- (c) The Architectural Control Committee is also hereby authorized to publish and promulgate from time to time, and revise and amend at any time in its sole discretion, construction rules to be followed by all Owners and builders performing work or constructing or installing improvements (including landscaping improvements) on the Property.
- (d) The Architectural and Design Guidelines described in (a) hereof, the Landscape Guidelines described in (b) hereof and the construction rules described in (c) hereof shall herein collectively be referred to as the "Architectural and Landscape Guidelines." The Architectural Control Committee may issue and amend the Architectural and Landscape Guidelines from time to time and may publish and promulgate different Architectural and Landscape Guidelines for different Phases, of the Property.

**ARTICLE 4**

**The Association; Automatic Membership and Voting Rights Therein.**

**Section 1. The Association.**

The Declarant has caused the Association to be formed and incorporated under the laws of the State of Georgia.

**Section 1.1 The Board and Association Officers.**

So long as Declarant owns any Lot or other portion of the Property, the members of the Board and the officers of the Association shall be appointed by Declarant. The number of members of the Board and the officers of the Association shall be as set forth in the Association Documents. So long as Declarant owns any Lot or other portion of the Property, Declarant may remove directors from the Board or officers from the Association, with or without cause, and appoint new Board members or officers to replace those removed, all in Declarant's sole discretion. At such time as Declarant owns no Lot or other portion of the Property, then the members of the Board shall thereafter be elected by a vote of the members in accordance with the Association Documents. Notwithstanding the foregoing, Declarant may choose, in its sole discretion, to relinquish its right to appoint, remove and replace the members of the Board and officers of the Association prior to the time that Declarant owns no portion of the Property, whereupon the Association members shall thereafter elect the members of the Board in accordance with the Association Documents.

**Section 2. Membership.**

Every person who is an Owner is and shall be a member of the Association; provided, however, that any Person who owns such interest merely as security for the performance of an obligation shall not be a member of the Association.

**Section 3. Classes of Membership; Voting Rights.**

The Association shall have two classes of membership: Class A and Class B.

(a) *Class A.* Class A members shall be those persons holding an interest required for membership as specified in Section 2 of this Article 4, with the exception of the Declarant. Class A membership shall be a nonvoting membership except on such matters and in such events as hereinafter specified. Class A members shall be entitled to full voting privileges upon the first to occur of the following events:

- (1) At such time as the Class B member shall so designate by notice in writing delivered to the Association; or
- (2) At such time as Declarant no longer owns any Lot; or
- (3) On the 25th day of November, 2007.

Before the earlier of the events described above, the Class A members shall be entitled to vote only on:

- (i) any proposal or change of method of calculating the maximum amount of the annual assessment delivered by the Association;
- (ii) any proposal that is a special assessment (but not a Special Individual Assessment) to be levied by the Association, except as otherwise specifically herein provided;
- (iii) any proposal to dedicate, transfer or sell all or any part of the Common Areas or the Recreation Area;
- (iv) any proposal to amend this Declaration; provided that the Class A members' voting rights shall be subject to the provisions of Section 5 of Article 10 of this Declaration; and
- (v) any other matter for which it is herein specifically provided that approval of all classes of membership is required.

When entitled to vote, Class A members shall be entitled to one vote for each Lot in which they hold any interest required for membership under Section 2 of this Article 4. When more than one Person holds an interest in a Lot, the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot.

(b) *Class B.* Declarant shall be the sole Class B member. Class B membership shall be full voting membership, and, during its existence, the Class B member shall be entitled to vote on all matters and all events. The Class B member shall be entitled to five (5) votes for each Lot in which it holds any interest. At such time as the Class A members shall be

entitled to full voting privileges, the Class B membership shall automatically terminate and cease to exist, in which event each Class B member shall be and become a Class A member insofar as it may then hold any interest required for membership in Section 2 of this Article 4. From and after the date on which the Class B membership shall terminate in accordance with this Article 4 and cease to exist, such membership shall not be revived or reinstated.

**Section 4. Suspension of Membership Rights.**

The membership rights of any member, including the right to vote, may be suspended by the Board pursuant to authority granted in the Association Documents, as amended from time to time. Any such suspension shall not affect such members' obligations to pay assessments past due or coming due during the period of suspension and shall not affect the permanent charge and lien on the members' property in favor of the Association.

**Section 5. Meeting of the Membership.**

All matters concerning meetings of members of the Association, including the time in which and the manner in which notice of any of said meetings shall be given to members of the quorum and percentage vote required for the transaction of business of any meetings, shall be specified in this Declaration, or in the Association Documents, as amended from time to time or by law.

**ARTICLE 5**

**The Common Area and Recreation Area**

**Section 1. Members Rights in the Common Area and Recreation Area.**

Declarant hereby covenants with the Association to convey the Common Areas and the Recreation Area to the Association on or prior to the date on which Class A members become entitled to full voting privileges under Article 4 of this Declaration.

**Section 2. Members' Easements of Enjoyment.**

Subject to the provisions contained in (a) through (h) of this Section, every member of the Association shall have a right in the easement of enjoyment in and to the Common Area and the Recreation Area including, but not limited to, the nonexclusive right of ingress and egress and the nonexclusive right to use the Recreation Area for recreational purposes. Unless waived by vote of holders of two-thirds (2/3) or more of those entitled to vote of all classes of membership as evidenced by an affidavit of the officer of the Association recorded in the Office of the Clerk of the Superior Court of Gwinnett County Georgia, and subject to applicable zoning ordinances, governmental rules and regulations and rights of Declarant and others as herein stated, the Recreation Area shall be used only for recreational purposes. Rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of Declarant or its designees to the exclusive use of such portion of the Common Area and the Recreation Area as Declarant, in the exercise of Declarant's sole discretion, may deem necessary or advisable, for, or as may be reasonably required, convenient or incidental to, the construction of improvements within the Common Area and the Recreation Area, the sale of property contained in the Common Area including, but not limited to sales and business offices, storage areas, construction yards and signs. Such right of Declarant shall and does exist notwithstanding any provision in this Declaration which might be construed to the contrary, and such right of the Declarant exists without affecting any member's obligation to pay assessments, coming due during such period of time and without affecting the permanent charge and lien on any member's property in favor of the Association.

(b) The right of the Association (if holders of two-thirds (2/3) or more of the vote of those then entitled to vote of all classes of membership authorized, and subject to applicable zoning ordinances) to borrow money for the purpose of improving the Recreation Area and in aid thereof to mortgage or otherwise burden or encumber the Recreation Area. In the event of a default upon any such mortgage or other burden or encumbrance, the lender shall then only have the right,

(i) to take possession of such Recreation Area (where such right of possession exists);



- (ii) to charge admission or other fees as a condition to continued enjoyment by the members; and
- (iii) if necessary, to open the enjoyment of the Recreation Area to persons other than members until the mortgage or other debt is satisfied, such rights being the exclusive remedy available to the lender; and at the time such mortgage or other debt is satisfied, the title to and possession of the Recreation Area shall be returned to the Association, all rights or persons other than members shall terminate and all rights of members hereunder shall be fully restored; and
- (c) The right of the Association to take such steps as are reasonably necessary to protect the Recreation Area against foreclosure;
- (d) The right of the Association to suspend the enjoyment of rights of any member for any period during which any assessment remains unpaid, and for such period as the Association considers appropriate for any infraction of its published rules and regulations;
- (e) The right of the Association to charge reasonable admission and other fees for the use of any facilities which may be constructed upon the Recreation Area;
- (f) The right of the Association at any time to transfer all or any part of the Recreation Area if authorized by two-thirds (2/3) or more of the vote of those then entitled to vote and of all classes of memberships subject to the provisions of this Declaration;
- (g) The right of the Association to grant such easements and rights-of-way to such utility companies or public agencies or authorities as it may deem necessary or desirable for the proper servicing and maintenance of the Recreation Area; and
- (h) All rules and regulations promulgated and published by the Association from time to time with respect to use and enjoyment of the Common Area and the Recreation Area by Owners.

**Section 3. Extension of Rights and Benefits.**

Every Owner shall have the right to extend the rights and easements of enjoyment vested in said Owner under this Article 5 to each of said Owner's tenants and to each member of said Owner's family who resides with said Owner and to other persons as may be permitted by the Board.

**Section 4. Restricted Activities in Common Areas and Recreation Area.**

No cutting of vegetation, dumping, digging, filling, destruction of other waste shall be committed on the Common Area or Recreation Area. There shall be no obstruction of the Common Area or Recreation Area, nor shall anything be kept or stored in the Common Area or Recreation Area, nor shall anything be altered, or constructed or planted in, or removed from, the Common Areas or Recreation Area, without the prior written consent of the Association. Each Owner shall be liable to the Association and/or Declarant for any damage to any Common Area and/or Recreation Area caused by the negligence or willful misconduct of the Owner or said Owner's family members, tenants, guests, agents, employees, or invitees. Provided, however, the provisions of this Section 4 shall not apply to Declarant in connection with Declarant's construction activities on the Property.

**Section 5. Restricted Activities Regarding Lakes and Ponds.**

The Property will contain one or more lakes or ponds which may or may not be Common Areas or Recreation Area. With respect to construction of any improvements on any Lot that abuts a lake or pond, a silt fence or barrier shall be placed and maintained across each such Lot during the construction of any improvements thereon in such manner as to protect the lake or pond from soil erosion and silt. Such fence or barrier shall be constructed prior to the commencement of any construction of improvements, including clearing or grading, and shall remain in place until such time as the said Lot has been landscaped or stabilized in a manner that will protect the lake or pond from soil erosion and silt. No pesticides or other toxic, hazardous or harmful chemicals shall be used for any purposes whatsoever within thirty (30) feet of any lake or pond. Any such chemicals used or applied more than thirty (30) feet from any lake or pond shall be used or applied so as to prevent the spread or dissemination of such chemicals into the lake or pond. The following activities shall be

conducted, if at all, only in accordance with rules and regulations promulgated and published by the Association from time to time and applicable to said activities:

(a) construction and location of any piers, jetties, docks, boat houses, or storage facilities or other similar structures shall be constructed or located on or in any portion of the lake or pond in the Subdivision;

(b) use of any boats or other floating vessels on any lake or pond in the Subdivision; and

(c) swimming, fishing or engaging in any water sports activities in or on any lake or pond in the Subdivision.

Any such activity shall be conducted at sole risk of Owner, notwithstanding that said activity may comply with Association rules and regulations. Moreover, Owner, by acceptance of title to a Lot in the Subdivision, shall be automatically deemed to (a) acknowledge the potential for harm regarding such activities in, on or around the lakes and ponds located on any portion of the Property, and (b) release and forever discharge Declarant and the Association from any and all claims of any kind or nature whatsoever that may be attributed to or arise as a consequence of any such activities in, on or around the lakes and ponds located on any portion of the Property.

**Section 6. Entrance Monuments.**

The Entrance Monuments shall be installed by Declarant but, after installation, shall be the property of the Association, and the Association shall be responsible for the maintenance, repair and replacement thereof, the cost of which shall be a common expense of the Association. Declarant hereby reserves for itself and for the benefit of the Association a perpetual, non-exclusive easement over each Lot on which an Entrance Monument is now or hereafter shall be located for the installation, erection, maintenance, repair and replacement of such Entrance Monument.

**Section 7. Lake and Pond Water Levels.**

Water levels of any lakes and ponds located on any portion of the Property (i) may increase or decrease at any time and from time to time, and (ii) may not remain constant for the period during which an Owner owns a Lot in the Subdivision. Each Owner, by acceptance of title to a Lot in the Subdivision, shall be automatically deemed to (a) acknowledge the potential for said increases or decreases in lake and pond water levels, and (b) release and forever discharge Declarant and the Association from any and all claims of any kind or nature whatsoever that may be attributed to or arise as a consequence of any such increases or decreases in lake and pond water levels.

## **ARTICLE 6**

### **Easements**

**Section 1. Easements and Cross-Easements on Common Areas.**

Declarant, for itself, its designees and the Association, reserves the right to impose upon the Common Areas henceforth and from time to time such easements and cross-easements for ingress and egress, installation, maintenance, construction and repair of utilities and facilities including, but not limited to, electric power, telephone, cable television, master antenna transmission, surveillance services, governmental and quasi-governmental purposes, sewer, water, gas, drainage, irrigation, lake maintenance, storm water management, lighting, television transmission, garbage and waste removal, emergency services, and the like as Declarant or the Association, as the case may be, deems to be in the best interests of, and necessary and proper for, the Subdivision or any Phase.

**Section 2. Use of Common Areas.**

Declarant declares that the Common Areas are subject to a perpetual nonexclusive easement in favor of Declarant, the Association and their designees, Owners and all of said Owners' family members, guests, invitees and tenants, and appropriate governmental and quasi-governmental agencies, to use the Common Areas for all proper and normal purposes including, but not limited to, ingress, egress and access for the furnishing of services and utilities and for such use of the facilities as the same are reasonably intended in accordance with the terms of this Declaration and any Additional Declaration. If ingress

or egress to any Lot or other portion of the Property is through an Common Area, any conveyance or encumbrance of such area shall be and remain subject to this easement.

**Section 3. Utility and Drainage Easements.**

The Property shall be subject to all easements and rights-of-way for utilities and drainage shown on the Plats including, but not limited to, those certain easements shown and designated on the Plats as:

- (a) "Utility Easement";
- (b) "Public Storm Drainage Easement";
- (c) "Sanitary Sewer Easement"; and
- (d) "Sanitary Sewer Right-of-Way."

Such easements are hereby reserved for the use of Declarant, its successors and assigns, and are hereby established for the use of the Association, its successors and assigns.

**Section 4. Sight Easements**

Declarant reserves the right to retain specific sight easements (and/or areas on Lots where trees and natural vegetation shall not be removed) in the Lot deeds.

**ARTICLE 7**

**Assessments**

**Section 1. Creation of the Lien or Personal Obligation for Assessments.**

Each Class A member, by acceptance of a deed or other conveyance for any Lot, Property, whether or not it shall be so expressed in any deed or other conveyance, shall be deemed to covenant and agree, or to have covenanted and agreed, to pay the Association (a) annual assessments and charges, and (b) special assessments; such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided shall be a charge and a continuing lien upon the Lot of each Owner against which each such assessment is made and shall also be the personal obligation of the person who is or was the record owner of the Lot at the time the assessment became due.

**Section 2. Purpose of Assessment.**

The assessments levied under this Article 7 shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the members and, in particular, for the servicing, improvement and maintenance of the Common Areas, the Recreation Area and the Entrance Monuments and facilities related thereto devoted to such purposes; and the payment of taxes and insurance thereon and repair, replacement and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof.

**Section 3. Annual Assessments.**

(a) The initial annual assessment of Class A members shall be Four Hundred and No/100 dollars (\$400.00) per Lot payable to the Association.

(b) The Class B member shall pay whatever amount, if any, in excess of the Class A members' assessment as, in the sole opinion of the Class B member, may be necessary to maintain and manage (and only to maintain and manage, including the payment of ad valorem taxes) the Common Areas.

(c) After the initial annual assessment, provided in subsection (a) above, the annual assessment shall be determined by the Board; provided, however, that any annual assessment set by the Board shall not be increased in any one year by an amount in excess of ten percent (10%) of the assessment for the year immediately prior to the year for which the increase is to be effective.

**Section 4. Special Assessments.**

Upon the affirmative vote of the holders of two-thirds (2/3) or more of the vote of those then entitled to vote of all classes of membership of the Association, the Association may levy and collect a specific special assessment so authorized for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction or unexpected repair or replacement of a capital improvement upon the Common Areas or Recreation Area,

including any necessary fixtures or personal property related thereto; or for the purpose of increasing the annual assessment by an amount in excess of what is authorized by Section 3 of this Article.

**Section 4.1. Special Individual Assessments.**

The Board may levy special assessments against individual Owners ("Special Individual Assessments") (i) for the purpose of paying for the costs of any construction, reconstruction, repair or replacement of any damaged component of the Common Area, occasioned by the acts of Owner(s) and not the result of ordinary wear and tear or (ii) for payment of fines, penalties or other charges imposed against an individual or separate Owner relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Association Documents or any rules or regulations promulgated hereunder, including, without limitation, penalties assessed by the Architectural Control Committee, reimbursement to Architectural Control Committee for any sums it expends on an Owner's behalf and reimbursement to the Association for all expenses incurred in connection with the enforcement of the provisions of Article 3. Provided, however, Declarant shall not be obligated to pay any Special Individual Assessment except with Declarant's prior written approval. The due date of any Special Individual Assessment levied pursuant to this Section 4.1 shall be fixed in the Board resolution authorizing such Special Individual Assessment. Upon the establishment of a Special Individual Assessment, the Board shall send written notice of the amount and due date of such Special Individual Assessment to the affected Owner(s) at least thirty (30) days prior to the date such Special Individual Assessment is due.

**Section 5. Equality of Assessment Among Lots.**

No Lot shall bear a higher assessment than any other Lot except that, until such time as the Class A members shall be entitled to full voting privilege in accordance with Article 4 of this Declaration, the Class B member may bear a greater or lesser assessment burden than Class A members while the Class B member may be subsidizing the Association with this obligation pursuant to Section 3 of this Article.

**Section 6. Date of Commencement of Annual Assessments; Due Dates.**

(a) Except for the initial annual assessment specified in Section 3 of this Article 7, the Board shall send written notice of the annual assessment and the amount of such assessment to every Association member at least thirty (30) days in advance of January 1 of the calendar year for which the annual assessment is to be effective. Unless otherwise provided by the Board, the entire amount of the annual assessment for each Lot shall become due and payable to the Association on the 1st day of January of each year and shall be paid to the Association without further notice from the Association; provided however that in the event the Board shall fail to send written notice of the annual assessment to members at least thirty (30) days prior to January 1 of the calendar year for which the annual assessment is to be effective, payment of the annual assessment shall not be due until thirty (30) days after such notice is given. Failure of the Board to notify members thirty (30) days prior to January 1 of the calendar year for which the annual assessment is to be effective shall not, however, reduce the amount of the assessment due and payable.

(b) The annual assessment shall be established on a calendar year basis and shall commence as to each member upon commencement of membership as provided in Section 2 of Article 4.

(c) The first annual assessment payable to the Association with respect to a Lot shall be adjusted according to the number of days remaining in the calendar year following the date a member becomes a member.

(d) The Association shall, upon demand at any time, furnish to any member liable for any assessment a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. A reasonable charge, as determined by the Board

may be made for the issuance of said certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

**Section 7. Effect of Nonpayment of Assessment: Personal Obligation; Lien; Remedies of the Association.**

(a) If an assessment is not paid on or before the date when due then such assessment shall become delinquent and shall, together with such interest thereon and the cost of the collection thereof, thereupon become a continuing lien on the delinquent members' Lot which shall bind such Lot in the hands of the then owner, his heirs, designees, personal representatives, successor and assigns. In addition to the lien rights, the personal obligation of the then Owner to pay such assessments shall remain his personal obligation and shall also pass to his successors in title. Such Owner shall nevertheless remain as fully obligated as before to pay to the Association any and all amounts which said Owner was obligated to pay immediately preceding the transfer; and such Owner and such successors in title shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such Owner and successors in title creating any indemnification of the Owner or any relationship of principal and surety as between themselves.

(b) If an assessment is not paid within thirty (30) days after the due date, such assessment shall bear interest from the date of the delinquency at the lesser of the highest rate permitted by law or fifteen percent (15%) per annum, and the Association may bring legal action against the Owner personally obligated to pay the same or foreclose its lien against such Owner's Lot in which event interest, costs and attorney's fees equal to ten percent (10%) of the principal amount shall be added to the amount of such assessment as may then be due. Each Owner by acceptance of a deed or other conveyance of a Lot, invests in the Association or its agents the right and power to bring all actions against said Owner personally for the collection such charges as a debt and to foreclose the aforesaid lien in an appropriate proceeding. The lien provided for in this Article 7 shall be in favor of the Association and shall be for the benefit of all other members. The Association acting on behalf of the other members shall have the power to bid in the encumbered Lot at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. The Association shall not waive any liens or rights it may have against any member or such member's Lot without the approval of holder of fifty-one percent (51%) or more of the vote of those then entitled to vote all classes of membership.

(c) If the assessment is not paid within thirty (30) days after the due date, the Association may also suspend the membership rights of the delinquent member, including the right to vote and the right to receive and enjoy such servicing and other benefits as may then be provided by the Association. Any such suspension shall not affect such member's obligation to pay assessments due during the period of such suspension and shall not affect the permanent charge and lien on such member's Lot in favor of the Association.

**Section 8. Subordination of Charges and Liens to Mortgages.**

(a) The liens and permanent charges of all assessments and charges authorized herein (annual, special or otherwise) with respect to any Lot is hereby made subordinate to the lien of any first Mortgage placed on such Lot if, but only if, all assessments and charges with respect to such Lot authorized herein having a due date on or prior to the date of the Mortgage is filed of record have been paid. The liens and permanent charges hereby subordinated are only such liens or charges as relate to assessments and charges authorized hereunder having a due date subsequent to the date such Mortgage is filed of record and prior to the satisfaction, cancellation or foreclosure of such Mortgage or the sale or transfer of the mortgaged Lot pursuant to any proceeding in lieu of foreclosure or the sale or transfer of the mortgaged Lot pursuant to a sale under power contained in such Mortgage.

(b) Such subordination is merely a subordination and shall not relieve the Owner of the mortgaged Lot of the personal obligation to pay all assessments and charges coming due at any time during ownership of such Lot. Such subordination shall not relieve such Lot

from the liens and permanent charges provided for herein (except to the extent a subordinated lien or permanent charge is extinguished as a result of such subordination as against a mortgagee or such mortgagee's assignee or transferee by foreclosure or by sale under power); and no sale or transfer of such Lot to the mortgagee or to any other person pursuant to a decree of foreclosure, or pursuant to any other proceeding in lieu of foreclosure or pursuant to a sale under power, shall relieve any existing or previous Owner of such Lot of any personal obligation or relieve such Lot or the Owner of such Lot from liability for any assessment or charges authorized hereunder becoming due after such sale and transfer.

**Section 9. Reserves.**

The annual assessments shall, as determined by the Board, include reasonable amounts as reserves for the future periodic maintenance, repair and/or replacement of all or a portion of the Common Areas, the Recreation Area and Entrance Monuments. Assessments collected as reserves shall not be considered advance payments of annual assessments.

**ARTICLE 8  
Administration**

**Section 1. Responsibility for Administration.**

The administration of the Association, and the maintenance, repair and operation of the Common Areas, the Recreation Area and the Entrance Monuments shall be the responsibility of the Association.

**Section 2. Management and Maintenance Agreement.**

The Association may enter into such management and maintenance agreements as are necessary or desirable for the administration and maintenance of the Common Areas, the Entrance Monuments and the Recreation Area. Any management agreement which is to be entered into, after approval by a majority of the Board, shall provide for the compensation to be paid, the term thereof, which shall not exceed one year, and the manner in which and the terms upon which such agreement may be terminated, which shall include the right of termination thirty (30) days after fifty-one percent (51%) of the members then entitled to vote, affirmatively vote to so terminate such contract at any time after the Class A members are entitled to the full voting privileges in accordance with Article 4.

**Section 3. Limitations of Liability; Indemnification.**

Notwithstanding the duties of the Association under Section 1 of this Article, the Association shall not be liable for injury or damage caused by the latent condition of the Common Areas, the Entrance Monuments or the Recreation Area, nor for injury caused by the elements, members or other persons; nor shall any officer or director of the Association be liable to any person for injury or damage by such officer or director in performance of the duties hereunder unless due to willful misfeasance or malfeasance or gross negligence of such officer or director. Each officer and director of the Association shall be indemnified by the members against all expense and liabilities, including attorney's fees, reasonably incurred or imposed upon him in connection with any proceeding to which he may be a party or in which he may become involved by reason of his being or having been an officer or director of the Association at the time such expenses and liabilities are incurred, except in such cases where the officer and director are adjudged guilty of willful misfeasance or malfeasance or gross negligence in the performance of his duties; provided that in the event of a settlement, the indemnification shall apply only when the Board approves of such settlement and reimbursement as being for and in the best interest of the Association.

**ARTICLE 9  
Insurance and Casualty Losses**

The Board or its duly authorized agent shall have the authority to and shall obtain insurance for all improvements on the Common Areas, the Entrance Monuments or the Recreation Area, against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief, in amounts sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard and shall also

obtain a public liability policy covering the Common Areas, the Entrance Monuments or the Recreation Area, and all damage or injury caused by negligence of the Association or any of its agents. All such insurance coverage obtained by the Board shall be written in the name of the Association and all such policies shall be written by an insurance company licensed to do business in the State of Georgia, and all policies shall be for the benefit of the Association and its mortgagees, if any, as their interests may appear.

## **ARTICLE 10**

### **General Provisions**

#### ***Section 1. Duration of Covenants and Restrictions.***

The Covenants and Restrictions contained in this Declaration shall run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty (20) years from and after the date this Declaration is recorded, after which time such covenants and restrictions shall be automatically extended for successive periods of twenty (20) years until the recordation of an instrument of termination within two (2) years of the expiration of the initial twenty (20)-year period or any extension thereof, such instrument having been executed by a minimum of fifty-one percent (51%) of the record Owners of the Lots.

#### ***Section 2. Enforcement.***

Enforcement of this Declaration shall be by the Association through proceedings at law or in equity against any Person or Persons violating or attempting to violate any of the provisions hereof, either to restrain such violation or to recover damages therefor or both.

#### ***Section 3. Notices.***

Any notice required or permitted to be sent to any member pursuant to any provision of this Declaration may be served by depositing such notice in the mails, postage prepaid, addressed to the member or Owner to whom it is intended at this last known place of residence, or to such other address as may be furnished to the secretary of the Association, and such service shall be deemed sufficient. The date of service shall be the date of mailing.

#### ***Section 4. Severability.***

Whenever possible, each provision of this Declaration shall be interpreted in such a manner as to be effective and valid, but if any provision of this Declaration or other application thereof to any Person or any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end, the provisions of this Declaration are declared to be severable.

#### ***Section 5. Amendment.***

Subject to the limitations hereinafter contained, this Declaration shall be amended only by the agreement of Owners of Lots to which two-thirds (2/3) of the votes in the Association pertain; provided, however, that, during any such time as Declarant has the right to appoint the members of the Board under this Declaration, the agreement shall be that of Declarant and the Owners of Lots to which two-thirds (2/3) of the votes in the Association pertain, exclusive of any vote or votes appurtenant to any Lot or Lots then owned by Declarant. Notwithstanding the above, during such time as Declarant shall own at least one Lot primarily for the purpose of sale of such Lot, no amendment shall be made to this Declaration without the written agreement of Declarant if such amendment would, in Declarant's sole judgment, impose a greater restriction on the use or development of any portion of the Property owned by Declarant. Any such vote shall be taken at a duly held meeting of the Association at which a quorum is present, all in accordance with the Association Documents. Any amendment or modification upon which the vote of the Association members is required pursuant to this Section 5 shall become effective when an instrument executed by the Association members voting for such amendment or modification is filed of record with the Clerk of the Superior Court of Gwinnett County, Georgia; provided, however, such an amendment or modification, in lieu of being executed by the Association members voting for such amendment or modification, may contain a certification of the Secretary of the Association stating that the amendment or modification has been

voted on and approved by the requisite number of votes of the Association members, as provided in this Section 5. The approval of any proposed amendment by a mortgagee shall be deemed implied and consented to if the mortgagee fails to submit a response to any written proposal for an amendment within thirty (30) days after the mortgagee receives notice of the proposed amendment sent by certified mail, return receipt requested.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed by its duly authorized officers and the appropriate corporate seals affixed hereto, the day and year first above written.

As to all signatories on behalf of  
Declarant, signed, sealed and  
delivered in the presence of:  
(Peter Millichap)  
Unofficial Witness  
(Sylvia Taylor)  
Notary Public (Affix seal and  
commission expiration date)

DECLARANT:  
BRIGHT WATER DEVELOPMENT CO.,  
LLC  
By: The Peachtree Development Group,  
Inc.,  
a Georgia corporation, Member Manager  
By: Thomas F. Rybert, President  
(AFFIX CORPORATE SEAL)