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From: Brent Mercer

**DECLARATION OF RESTRICTIVE COVENANTS FOR  
WILLOW CREEK ESTATES AND BY LAWS FOR  
WILLOW CREEK ESTATES HOMEOWNERS ASSOCIATION**

WHEREAS, Catoosa Land Investments, LLC (hereinafter referred to as "Developer" or "Developers") owns and is developing a tract of land located in Catoosa County, Georgia and more particularly described by plat recorded in Plat Book \_\_\_\_\_, pages \_\_\_\_\_, in the Office of the Clerk of the Superior Court of Catoosa, County, Georgia. Said property, as developed, is more commonly referred to as Willow Creek Estates and is described by metes and bounds on Exhibit "A" which is attached hereto and made a part hereof (hereinafter referred to as the "Subdivision"); and

WHEREAS, Developers desire to provide for the preservation of values and amenities in the Subdivision and for the maintenance and upkeep of said Common Properties and, to this end, desires to subject the real property described on Exhibit "A" hereof to the covenants, restrictions, easements, affirmative obligations, charges, and liens, hereinafter set forth, each and all of which is and are hereby declared to be for the benefit of the Subdivision and each and every Owner of any and all parts thereof; and

WHEREAS, Developers have deemed it desirable, for the efficient preservation of the values and amenities in the Subdivision, to delegate and assign to the Owners of the Lots of the Subdivision the power and authority of maintaining and administering the Common Properties and administering and enforcing the covenants and restrictions governing the same and collecting and disbursing all assessments and charges necessary for such maintenance, administration and enforcement, as hereinafter created; and

WHEREAS, Developers herein establish an association, to be called Willow Creek Homeowners Association, for the purpose of exercising the above functions and those which are more fully set out hereafter.

**DECLARATION**

NOW, THEREFORE, the Developers subject the real property described on Exhibit "A" hereof to the terms of this Declaration and declare that the same is and shall be held, transferred, sold, conveyed, leased, occupied, and used subject to the covenants, restrictions, conditions, easements, charges, assessments, affirmative obligations and liens (sometimes referred to as "the Covenants") hereinafter set forth.

**ARTICLE I: DEFINITIONS**

The following words and terms, when used in this Declaration or any supplemental Declaration (unless the context shall clearly indicate otherwise), shall have the meanings set forth below.

**Association.** "Association" shall mean the Willow Creek Homeowners Association, Inc., a Georgia non-profit corporation.

- 1.02 **Board of Directors.** "Board of Directors" or "Board" shall mean the governing body of the Association established and elected pursuant to this Declaration.
- 1.03 **Common Expense.** "Common Expense" shall mean and include (i) expense of administration, maintenance, repair or replacement of the Common Properties, including, but not by way of limitation, the repair, maintenance and replacement of all roads and streets in the Willow Creek Estates; (ii) expenses agreed upon as Common Expenses by the Association; (iii) expenses declared Common Expenses by the provisions of this Declaration; and (iv) all other sums assessed by the Board pursuant to the provisions of this Declaration.
- 1.04 **Common Properties.** "Common Properties" shall mean those easements and common and mutual appurtenances which are shown on the above referenced recorded plat and easements appurtenant thereto and required to be maintained by the Association, and which are intended for the common use and benefit of all Owners. The Common Properties are all of the portions of the Subdivision which do not include the Lots and which have not been dedicated to or accepted by Catoosa County, Georgia. Common Properties include, but are not limited to Subdivision roads and streets, street lights, sidewalks, Subdivision signage, entrance, fencing and security gates, and drainage and detention facilities (including detention ponds).
- 1.05 **Covenants.** "Covenants" shall mean the covenants, restrictions, conditions, easements, charges, assessments, affirmative obligations and liens set forth in this Declaration.
- 1.06 **Declaration.** "Declaration" shall mean this Declaration of Covenants and Restrictions for Willow Creek Estates and ByLaws for Willow Creek Homeowners Association, Inc. and any supplemental declaration filed pursuant to the terms hereof.
- 1.07 **Developer.** "Developer" or "Developers" shall mean Catoosa Land Investments, LLC, a Georgia limited liability company.
- 1.08 **Existing Land.** "Existing Land" shall mean the real property described on Exhibit "A" hereof.
- 1.09 **First Mortgage.** "First Mortgage" shall mean a recorded Mortgage with priority over all other mortgages.
- 1.10 **First Mortgagee.** "First Mortgagee" shall mean a beneficiary, creditor or holder of a First Mortgage.
- 1.11 **Lot.** "Lot" or "Lots" shall mean any portion of improved or unimproved plot of land shown or designated as a lot on the aforementioned recorded plat.
- 1.12 **Member or Members.** "Member" or "Members" shall mean any or all Owner or Owners who are Members of the Association.
- 1.13 **Mortgage.** "Mortgage" shall mean a security deed, as well as a Mortgage.
- 1.14 **Mortgagee.** "Mortgagee" shall mean a beneficiary, creditor or holder of a Security Deed, as well as a holder of a Mortgage.

1.15 **Owner or Owners.** "Owner" or "Owners" shall mean the recorded Owner or Owners, whether one or more persons, firms, associations, corporations, or other legal entities, of the fee simple title to any Lot situated upon the Properties but, notwithstanding any applicable theory of a mortgage, shall not mean or refer to a Mortgagee, unless and until such Mortgagee has acquired title pursuant to foreclosure, nor shall the term "Owner" mean or refer to any lessee or tenant of any Owner. The Developer may be an Owner.

1.16 **Property or Properties.** "Property" or "Properties" shall mean the Existing Land which is subject to this Declaration or any supplemental declaration under the provisions hereof.

1.17 **Record or To Record.** "Record or To Record" shall mean to record pursuant to the laws of the State of Georgia relating to the recordation of deeds and other instruments conveying or affecting title to real property.

## ARTICLE II: USE RESTRICTIONS

2.01 **Land Use; Number of Dwellings:** The property located in the Subdivision, and any other property to which these restrictions are made applicable by express reference, shall be used for private residential purposes only, and no building of any kind whatsoever shall be erected or maintained on the Property or upon any Lot, except as private dwelling houses, each dwelling house being designated for occupancy by a single family. Not more than one residence shall be erected or maintained upon any Lot and no structure of temporary character, trailer, basement, tent, shack, garage, barn or other out buildings shall be used on any Lot at any time as a residence, either temporarily or permanently. Notwithstanding the foregoing, the Developer reserves the right to maintain a construction trailer on the Property during the development of the Subdivision.

2.02 **Dwelling Size:** Single-level homes constructed in said Subdivision must contain at least 1400 square of living space on the same level, exclusive of garages, enclosed porches and decks, and other such spaces. Multi-level homes constructed in said Subdivision must contain at least 1600 square feet of living space, with a minimum of 900 square feet on main level, exclusive of garages, enclosed porches and decks, and other such spaces. All homes must be of stick built construction and no modular homes, mobile homes, single wides or double wides are permitted on any Lot in the Subdivision.

2.03 **Construction Requirements:** The following requirements, in addition to any requirements imposed by federal, state or local law, shall apply to the construction of houses in the Subdivision:

- (a) No exposed concrete blocks may be used in the construction of any home in said Subdivision. The front portion of foundations must be faced with brick or stone and stucco may only be used on the rear elevation of foundations of homes, excluding foundations with height exceeding one foot. Front (and one end of foundation if on a corner lot) must be brick or stone. Foundations of

- homes with conventional flooring must be faced with brick or stone on both front and side elevations;
- (b) Exterior walls of homes must be painted, unless faced with brick, mountain stone, vinyl siding, hardy board or synthetic stucco (such as Sto brand);
  - (c) All homes constructed must have at least a two-car garage. The construction of carports is prohibited. The two-car garage of any home cannot be enclosed or otherwise incorporated into the heated and cooled living area of the main dwelling and may not be used when calculating the square footage of living space in the main dwelling;
  - (d) All homes must have a roof pitch of at least 7/12 and must be guttered in front and rear. Homes must be constructed with architectural shingles on the roof;
  - (e) All homes must have a rear-covered deck or covered patio of at least 140 square feet;
  - (f) Construction of all homes must fully comply with all local building codes and ordinances;
  - (g) All driveways must be constructed of concrete with the exception of an existing house on Lot \_\_\_\_\_;
  - (h) The front of all homes must be at least 40% brick, stone or synthetic stucco;
  - (i) Within thirty (30) days of completion of construction of a home, the builder or homeowner must plant at least One (1) Flowering Tree in the front yard with the minimum height of Six (6) feet. Owners of corner lots in the Subdivision must plant at least two (2) trees with the above referenced height requirements, one in the front and one in the side yard.;
  - (j) The front yards of all lots in the Subdivision shall contain sod and the front and side yards of all corner lots in the Subdivision shall contain sod;
  - (k) Any mailbox installed on any lot in the Subdivision shall be of decorative type with light on top. The design of any mailbox must be approved by the Developer prior to its construction and/or installation;
  - (l) Within six (6) months from the time of the purchase of each lot in the Subdivision, the owner shall install a sidewalk along the portions of the lot which abut the street. Sidewalks shall be concrete, sixty (60) inches in width, four inches thick, and installed along all streets adjoining each lot next to concrete curb. Specifications for the sidewalks shall be obtained from Developers. Sidewalks shall be installed on each lot so as to be uniform with other sidewalks in the Subdivision. The edge of the sidewalk which abuts the street shall be no closer than two (2) feet to the curb;

- (m) No wooden porches may be constructed on the front of any home. All front porches must be constructed with a concrete floor;
- (n) All utilities installed on any lot shall be installed underground. No overhead or above ground utilities are permitted.
- (o) Any propane tank installed on any Lot in the Subdivision shall be installed behind the rear of the main dwelling. In addition, any propane tank installed on a Lot in the Subdivision which has a capacity of over one hundred twenty (120) gallons shall be of the underground type and shall be buried in the rear yard of the main dwelling.
- (p) All builders must keep the lot clean during construction and gravel must be kept on every driveway during construction unless already concreted.

**2.04 Dumpsters:** No dumpsters are permitted on any lot at any time, except during the construction period. Upon completion of a home, any dumpster utilized during construction shall be immediately removed from the lot.

**2.05 Pre-Approval of Plans:** All home plans in said subdivision must be approved in writing by Developers prior to commencement of construction. When submitted to the Developer for approval, plans must, at a minimum, specifically show for approval the proposed appearance of the home, main floor elevations, and exterior paint color scheme. Developer shall be provided one set of plans for each home built to be retained by Developer.

**2.06 Completion of Homes:** All homes built must be completely finished, including yard, driveway, landscaping and painting within six (6) months of the date Developer approves the plans for construction.

**2.07 Outbuildings; Fences; Pools:** All outbuildings, detached garages and fences must be built in rear yards only, and must be built of the same materials and colors used on the house. Any outbuildings or detached garages or other structures shall be constructed to conform to the design of the main dwelling. The proposed design of any outbuilding, detached garage or other structure must be approved by the Developer or Association prior to the commencement of construction. Fences must be constructed of wood or vinyl and no chain link fences are permitted. Fences constructed shall not be more than six feet in height. Fences constructed on corner lots must be at least thirty (30) feet from any road side property line. All swimming pools must be of the in-ground type only.

**2.08 Pets:** All pets must be kept within fences on the lots in the Subdivision. Pets are not permitted to roam the Subdivision. No horses, cattle, goats, sheep, swine, or other farm livestock may be kept on any lot. No commercial breeding of animals is permitted in any portion of the Subdivision.

**2.09 Vehicles; Parking:** No truck larger than one ton in size may be parked or kept on any lot except during construction of the home on said lot. No junk or inoperable cars or cars in need of body repair may be parked on kept on any lot. No boats, RV's or trailers of any type to be parked on any lot in the Subdivision. No parking is permitted on the right of ways of the Subdivision Streets.

**2.10 Satellite Dishes:** No satellite dishes larger than twenty-four (24) inches in diameter may be erected on any lot or home.

**2.11 Building Setbacks:** The following building setbacks apply to all lots (except corner lots): Front building setbacks are 30 feet; rear building setbacks are 25 feet and side building setbacks are 10 feet. Corner lots shall have a side building setback of 20 feet on the side of the lot which abuts the street.

**2.12 Drainage Plans:** Developer must approve all site drainage plans for each lot in the Subdivision prior to the commencement of construction. All builders and/or lot owners must adhere to and complete any drainage plan approved by Developer.

**2.13 Common Properties.** The Common Properties shall not be used except for one or more of the following purposes:

(a) For the installation and maintenance, of drainage systems, detention areas, water lines, sewer lines, gas lines, telephone lines, power lines, cable tv lines, lighting, and all other utility and/or service lines;

(b) Ingress and Egress, both pedestrian and vehicular, including the maintenance of roads and/or walking trails;

(c) Construction and maintenance of fences (including but not limited to security fences), gates, subdivision signage, alarms, signage, etc.;

(d) The Common Properties shall remain permanently as open space and there shall be no development of same. No building, structure or facility shall be placed, installed, erected or constructed in or on said Common Properties, unless it is purely incidental to one or more of the uses above specified. Notwithstanding any other provision of this Declaration to the contrary, no amendment shall be made which impairs or diminishes the rights of the Members of the Association in the Common Properties.

**2.14 Violations and Enforcement.** In the event of violations of any one or more of the provisions of this Article or this Declaration, the Association, its successors and assigns, including all parties hereafter becoming Owners of any one or more of the Lots to which the provisions of this Declaration apply, may bring action or actions against the Owner seeking to enjoin such violation, or attempted violation, and the Owner shall be further liable for such damages as may accrue, including court costs and reasonable attorney's fees incident to any such proceedings, which costs and fees shall constitute liquidated damages. By reason of the rights of enforcement of the provisions of this Declaration being given unto Owners of

Lots (subject to rights of variance reserved by the Board), it shall not be incumbent upon the Association to enforce the provisions of this Declaration or to prosecute any violation thereof. In the event of a violation of these restrictions, a waiver thereof may be made by the Board in its sole discretion, if said waiver does not adversely affect the purposes contained herein.

### ARTICLE III: ASSOCIATION

**3.01 Membership.** Every person or entity who is a record Owner of a fee simple interest in any Lot which is subject to this Declaration shall be a Member of the Association, provided that any such person or entity who holds such title or interest merely as a security for the performance of an obligation shall not be a Member of the Association. Membership shall automatically be transferred to the new Owner upon the conveyance of any Lot and recording of the Deed of Conveyance in the Office of the Clerk of the Superior Court of Catoosa County, Georgia, in addition to payment of any Association initiation fees, assessments, or dues. Membership shall be appurtenant to ownership of any Lot which is subject to assessment.

**3.02 Voting Rights.** The Association shall have one class of voting membership which is as follows:

(a) Lot Owners shall have full voting privileges at the Annual Association Meeting concerning all Common Properties, improvements, changes to this Declaration, changes of the Board of Directors, President of the Association, Vice President of the Association, Secretary-Treasurer, and any interest concerning the Association. Occupants who are not an Owner of a Lot shall have no vote or voice in the affairs of the Association.

In no event shall more than one vote be cast with respect to any Lot. When an Owner signs a proxy, such vote shall be counted when such proxy is contained in a written instrument delivered to the Secretary of the Association before the vote is counted. Any Owner who owns multiple Lots shall have one (1) vote for each Lot owned.

### ARTICLE IV:

#### THE BOARD OF DIRECTORS AND OFFICERS

**4.01 Board of Directors.** The administration of the Property on behalf of the Association shall be conducted by a Board of Directors ("Board") which shall consist of 5 natural persons of legal age, each of whom shall be a Member in good standing of the Association, and will maintain such representation during membership on the Board.

**4.02 Initial Board of Directors.** The Developer shall act as the Board of Directors during the first 24 months following the date of this Declaration or until all Lots in the Subdivision have been sold by Developer, whichever occurs last. The Developer shall have all powers and authority to act which are granted to the Board of Directors in this Declaration. However, notwithstanding any provision herein to the contrary, Developer shall have the right to terminate its obligations as initial Board of Directors at any time upon giving notice of its intent to do so to

all Owners and upon the election of the first Board of Directors and Officers as provided in this Declaration. Notwithstanding any provision of this Declaration to the contrary, as long as Developer is acting as the initial Board of Directors, Developer shall have the absolute power and right to amend, change, or alter the provisions of this Declaration.

**4.03 Election.** At each annual meeting, subject to the provisions hereof concerning filling vacancies of unexpired terms, the Association shall elect those members of the Board, President, Vice-President, and Secretary-Treasurer as required under Section 5.05 who shall serve the terms set out under Sections 4.04 hereof. However, the members of the Board elected to succeed the prior elected officers may be elected at a special meeting duly called and specifically called for that purpose by the Board and the Board elected at said special meeting to serve until the first annual meeting of the Association held thereafter. Three members of the board shall be elected every other year.

**4.04 Term.** Members of the Board shall serve for a term of one year. Three members shall be elected every other year. The Members of the Board, President, Vice-President and Secretary-Treasurer shall serve until their respective successors are duly elected and qualified, or until their death, resignation or removal. The President, Vice-President and Secretary-Treasurer shall serve for a term of one year.

**4.05 Resignation or Removal.** Any member of the Board, President, Vice-President, and Secretary-Treasurer may resign at any time by giving written notice to the President or Vice-President should the resigning member be the President. Any Member of the Board or elected officer may be removed from elected office by a two-thirds (2/3) affirmative vote of the Association except that a vacancy on the Board shall be deemed to exist in the event of the death of a member, the disability of a member which, in the opinion of the majority of the Board, renders such member incapable of performing his elected duties, or in the event a member shall cease to be a Member of the Association. Whenever there shall occur a vacancy on the Board for any reason, the remaining Board members shall elect a successor member to serve until the next annual meeting of the Association or until a Special Meeting is called for filling vacancies at which time said vacancy shall be filled by the Association for the unexpired term.

**4.06 Compensation.** The members of the Board and elected officers shall receive no compensation for their services unless expressly provided for by the Association but shall be reimbursed for reasonable expenses incurred by them in the performance of their duties.

**4.07 Powers and Authority of the Board.** The Board and elected officers, for the benefit of the Property and the Association, shall enforce the provisions of this Declaration, these By-Laws, and Rules and Regulations governing the Property. Subject to any provision herein, the Board and elected officers shall have the power and authority to acquire and pay for the following, which shall be deemed Common Expenses of the Association:

- (a) Water, sewer, electrical, lighting, and other necessary utilities for the Common Properties, including repair and maintenance of Subdivision entrance sign.
- (b) Legal and accounting services necessary or advisable in the operation of the Common Properties and the enforcement of this



Declaration, these By-Laws, and any rules and regulations made pursuant thereto.

(c) Painting, maintenance, repair, replacement and landscaping of the Common Properties. The Board shall also have the right from time to time to acquire and dispose of, by sale or otherwise, and without the necessity of approval by any Owner, furnishings and equipment and other personal property for the Common Properties and to provide maintenance, repair and replacement thereof, which shall include but not be limited to the maintenance of the common fencing, gates, common signage, lighting, shrubs, grass, roads, sidewalks, drainage and detention areas.

(d) Any other materials, supplies, labor, services, maintenance, repairs structural alterations, insurance, taxes or assessments that the Board is required to secure or pay pursuant to the terms of this Declaration, these By-Laws or any Rules or Regulations promulgated thereunder or which, in its opinion, shall be necessary or advisable for the operation of the Common Properties or for the enforcement of this Declaration, these By-Laws or the Rules and Regulations.

The Board shall have the exclusive right to contract for all goods, services, including security and insurance, payment for which is to be made from Common Expenses.

**4.08 Additional Powers of the Board.** The Board shall have the right to acquire, operate, lease, manage, trade and otherwise deal with the Common Properties as may be necessary or convenient in the operation and management of the said Common Properties, and in accomplishing the purposes set forth herein.

**4.09 Meetings of the Board.** Meetings of the Board shall be held at such places within the State of Georgia as the Board shall determine, at least once per quarter. Three members of the Board, which shall include the President or Vice-President, and the Secretary-Treasurer (or his appointee from the Board) shall constitute a quorum, and if a quorum is present, the decision of a majority of those present shall be the act of the Board.

Meetings of the Board shall be chaired by the President or Vice-President of the Association and the minutes shall be recorded by the Secretary-Treasurer of the Association (or an appointee of the Board). Any action required to be or which may be taken by the Board may be taken without a meeting of the Board pursuant to a written consent, setting forth the action so taken, signed by a majority of the members of the Board.

**4.10 Special Meetings.** Special meetings of the Board may be called by the President of the Association or by any two Board members.

**4.11 Notice of Meetings.** Regular meetings of the Board may be held without call or notice. The person or persons calling a special meeting of the Board shall, at least ten (10) days before the meeting, give notice thereof by any usual means of communication to all Board Members. Such notice need not specify the purpose for which the meeting is called. If an agenda is prepared for such a meeting, the meeting need not be restricted to discussions of those items listed on the agenda.

**4.12 Waiver of Notice.** Any members of the Board may, at any time, waive notice of any meeting of the Board in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance of any member of the Board at

any meeting thereof shall constitute a waiver of notice of such meeting unless a Board member attends the meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called and does so object by delivering a written document to that effect.

4.13 **Fiscal Year.** The fiscal year shall be determined by the Board.

4.14. **Special Committees.** Special committees shall be appointed by the President. The Board shall have rights to call for the formation of committees by motion.

4.15 **Rules and Regulations.** The Board shall have the power and right to adopt and amend rules and regulations for the purpose of governing details of the operation and use of the Common Properties and setting forth restrictions on, and requirements respecting the use and maintenance of the Common Properties. Copies of the Rules and Regulations shall be furnished to each Owner prior to the time the same shall become effective.

4.16 **Limitation on Capital Additions, Etc.** Except as permitted in other specific provisions set forth in this Declaration, the Board shall authorize no structural alterations, capital additions to, or capital improvements of the Common Properties, any of which require an expenditure in excess of One Thousand and no/100 (\$1,000.00) Dollars without approval of the majority vote of the Association; provided, however, that the Board shall have the power to make any such structural alterations, capital additions to, or capital improvements of, the Common Properties as are necessary, in the Board's reasonable judgement, to preserve or maintain the integrity thereof without obtaining such approval, if in the opinion of the Board an emergency exists upon which should be corrected before a meeting of the Association could be reasonably called and held. Nothing contained herein shall limit the right of the Board to make expenditures for the necessary and reasonable repair and maintenance of the roads and streets in the Subdivision.

4.17 **Failure to Insist on Strict Performance Not Waiver.** The failure of the Board or its agents to insist, in any one or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions in this Declaration, or the By-Laws or the Rules and Regulations or to exercise any right or option herein contained, or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment for the future, of such terms, covenants, conditions or restrictions, rights, options or notices; but such terms, covenants, conditions or restrictions, rights, options or notices shall remain in full force and effect.

## ARTICLE V:

### THE ASSOCIATION; MEETINGS, OFFICERS, ETC.

5.01 **Quorum.** The presence in person or by proxy at any meeting of the Association of a majority of the Owners of Lots subject to assessment in response to notice to all Owners properly given in accordance with Sections 5.02 or 5.03 of the By-Laws, as the case may be, shall constitute a quorum. Unless otherwise expressly provided in this Declaration, any action may be taken at any meeting of the Association upon the affirmative vote of persons entitled to cast a simple majority of the votes which are represented at such meeting. Proxy vote

representation shall be recognized and counted, should members not submit a proxy then a vote "for" the recommendation of the Board will be assumed.

**5.02 Annual Meeting.** There shall be an annual meeting of the Association on the first Monday of January at 6:00 o'clock pm at the Subdivision or at any place or time (but not more than thirty (30) days before or after such date) so designated by the Board. The Secretary-Treasurer shall present a review of the expenses for the prior year and a budget for the coming year or any pertinent actions passed by the Board.

**5.03 Special Meeting.** Special meetings of the Association may be held at any time and at any reasonable place to consider matters which require the approval of all or some of the Owners, or for any other reasonable purpose. Special meetings shall be called by a majority of the Board, or at least by one-third (1/3) of the Owners by written notice, delivered to all Owners not less than fifteen (15) days prior to the date fixed for said meeting. The notice shall contain a description of matters to be considered.

**5.04 Parliamentary Rules.** Robert's Rules of Order (latest edition) shall govern the conduct of Association meetings when not in conflict with this Declaration or other such rules adopted by the Board.

**5.05 Officers.** The Officers of the Association shall be a President, Vice-President, and Secretary-Treasurer. Each officer shall be required to be a Member in good standing; and the President must be a member of the Board. No Officer shall receive compensation for serving as such. Officers shall be annually elected by the Association and may be removed or replaced by same. The Board may, in its discretion, require that officers be subject to fidelity bond coverage.

(a) **President.** The President shall preside at all meetings of the Association and of the Board, and may exercise the powers ordinarily allocable to the presiding office of an association, including the appointment of committees. The President shall be authorized to provide payment for Association expenses not to exceed Five Hundred and no/100 (\$500.00) Dollars.

(b) **Vice-President.** In the absence or inability of the President, the Vice-President shall perform the functions of the President.

(c) **Secretary-Treasurer.** The Secretary shall keep the minutes of all proceedings of the Board and the Association and shall keep such books and records as may be necessary for the records of the Association and the Board, including the minute book wherein the resolutions shall be recorded. As Treasurer he/she shall be responsible for the fiscal affairs of the Board and the Association.

## **ARTICLE VI: LIABILITY AND INDEMNIFICATION**

**6.01 Liability of Members of the Board and Officers.** The members of the Board, the officers and any agents and employees of the Association shall: (i) not be liable to the Members or Association as a result of their activities as such for any mistake of judgment, or otherwise, except for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (ii) have no personal liability to a Member or any other person or entity under any

agreement, instrument or transaction entered into by them on behalf of the Members in their capacity as such; (iii) have no personal liability in tort to a Member or any other person or entity, direct or imputed, by virtue of acts performed by them as Board members and/or officers except for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; and (iv) have no personal liability arising out of the use, misuse or condition of the Property, or which might in any other way be assessed against or imputed to them as a result or by virtue of their capacity as such Board members and/or officers.

**6.02 Indemnification by Association.** To the extent now or hereafter permitted by applicable law, the Association shall indemnify and hold harmless any person, his heirs and personal representatives, from and against any and all personal liability, and all expenses, including without limitation counsel fees and court costs, incurred or imposed, or arising out of or in settlement of any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative instituted by any one or more Members or any other persons or entities, to which he shall be or shall be threatened to be made a party by reason of the fact that he is or was a member of the Board or an officer or agent or employee of the Association; provided, in the case of any settlement, that the Board shall have approved the settlement, which approval is not to be unreasonably withheld. Such right of indemnification shall not be deemed exclusive of any other rights to which such person may be entitled as a matter of law or agreement or by vote of the Association of the Board, or otherwise. The indemnification by the Association set forth in this Article VI shall be paid by the Board on behalf of the Association and shall constitute a Common Expense.

**6.03 Costs of Suit in Actions Brought by One or More Members on Behalf of All Members.** No suit shall be brought by one or more but less than all Members on behalf of all Members without approval of a majority of Members and, if approval is obtained, the plaintiffs' expenses, including reasonable counsel's fees and court costs, shall be a Common Expense unless such suit is brought by one or more Members against other Members, the Association or against the Board, the officers, employees, or agents thereof, in their capacities as such, with the result that the ultimate liability asserted would, if proved, be borne by all Members as defendants, in which event the plaintiffs' expenses, including counsel's fees and court costs, shall not be charged as a Common Expense.

**6.04 Notice of Suit and Opportunity to Defend.** Suits brought against the Association, or the Board, or the officers, employees or agents thereof, in their respective capacities as such, or the Common Properties as a whole, shall be directed to the President of the Association, who shall promptly give written notice thereof to the other members of the Board and any Mortgagees, and shall be defended by the Board, and the Association and all Members shall have no right to participate other than through the Board in such defense. Suits against one or more, but less than all Members shall be directed to such Member, who shall promptly give written notice thereof to the Board and to the Mortgagees of the Lots affected, and shall be defended by such Members at their expense.

## ARTICLE VII

### ASSESSMENTS

**7.01 Creation of Lien and Personal Obligation of Assessments.** Each Owner by acceptance of a Deed conveying a Lot, whether it be expressed in any such deed or other conveyance, by submission of such Lots to this Declaration under the provisions of Section 2.01 hereof, shall be deemed to covenant and agree to all of the terms and provisions of this Declaration and to pay to the Association Annual Assessments and Special Assessments for the purposes set forth in Section 7.04 of this Article, at such time as hereinafter provided. The Owner of the Lot shall be personally liable to the Association for the payments of all Assessments, whether Annual or Special, which may be levied while such party is Owner of a Lot. The Assessments, together with interest thereon and costs of collection therefore as hereinafter provided, shall be a charge and continuing Lien on the Lot and all of the improvements thereon against which each such Assessment is made. Unpaid Assessments shall bear such interest from due date to date of payment at a rate set by the Board.

**7.02 Purpose of Assessments.** The Assessments levied by the Board shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and for the improvement and maintenance of the Common Properties and Property. Special Assessments shall be used as set forth in Section 7.04 of this Article.

**7.03 Amount of Monthly Assessments.** The Monthly Assessment per Lot shall be determined by the Board and shall be payable in advance and monthly unless a majority of the Board should elect to increase or reduce said amount at an annual or special meeting approved by two-thirds (2/3) of the Members in attendance.

**7.04 Special Assessments for Improvements and Additions.** The Board may levy Special Assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Properties or Property, including necessary fixtures and personal property related thereto or additions to the Common Properties or Property, provided that such Assessment shall have the approval of two-thirds (2/3) of the Owners at a duly called meeting of the Association. Written notice shall be sent to Members thirty (30) days in advance setting forth the purposes of said meeting. This provision shall not apply to necessary repairs and improvements to the roads and streets in the Subdivision and a special assessment may be made by the Board to defray the reasonable costs of repairs and maintenance on the roads and streets without approval of the Owners as provided above.

**7.05 Date of Commencement of Monthly Assessments.** The Monthly Assessment shall commence on the date fixed by the Board to be the date of commencement. Such Monthly Assessment will be due and payable on the same date of each month as so established. The due date shall be fixed in the resolution authorizing such Assessment.

**7.06 Lien.** Recognizing that the necessity for providing proper operation and management of the Common Properties and Property entails the continuing payment of costs and expenses therefore, the Association is hereby granted a lien

upon each Lot and the improvements thereon as security for payment of all Assessments against said Lot, now or hereafter assessed, which lien shall also secure all costs and expenses, and reasonable attorney's fees and court costs, which may be incurred by the Association in the enforcement of the lien upon said Lot. The lien granted to the Association may be foreclosed as other liens are foreclosed in the State of Georgia. Failure by the Owner to pay any Assessment, Annual or Special, on or before the due dates set by the Association for such payment shall constitute a default, and this lien may be foreclosed by the Association.

**7.07 Lease, Sale or Mortgage of Lot .** Whenever any Lot may be leased, sold or mortgaged by the Owner thereof, which lease, sale or mortgage shall be concluded only upon compliance with other provisions of this Declaration, the Association, upon written request of the Owner of such Lot, shall furnish to the proposed lessee, purchaser or mortgagee, a statement certifying the status of payment of any Assessments which shall be due and payable to the Association by the Owner of such Lot; such statement shall include whether there exists any matter in dispute between the Owner of such Lot and the Association under this Declaration.

Such statement shall be executed by an officer of the Association, and any lessee, purchaser or mortgagee may rely upon such statement in concluding the proposed lease, purchase or mortgage transaction, and the Association shall be bound by such statement.

Should payment of any Assessment be in default when such lease, sale or mortgage should be transacted, then the rent, proceeds of purchase or mortgage shall be applied by the lessee, purchaser or mortgagee first to payment of any delinquent Assessment to the Association before payment of any rent, proceeds of purchase or mortgage to the Owner of any Lot who is responsible for payment of such delinquent Assessment.

In any voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments against the grantor and the Lot made prior to the time of such voluntary conveyance, without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefore.

## **ARTICLE VIII**

### **MORTGAGES, MORTGAGEES AND PROCEDURES AND RIGHTS RELATING THERETO**

#### **8.01 Mortgages and Other Liens.**

(a) Each Owner shall have the right, subject to the provisions herein, to make or create, or cause to be made or created, any mortgage or other lien on or affecting said Owner's respective Lot, together with said Owner's respective ownership interest in the Common Properties, provided however that, from the date this Declaration is recorded, no Owner shall have the right or authority to make or create, or cause to be made or created, any mortgage or other lien on or affecting the Property or any part thereof except only to the extent of said Owner's own Lot and the respective interest in the Common Properties corresponding thereto.

(b) Subsequent to the recording of this Declaration, no liens of any nature shall be created or arise against any portion of the Property except against an individual Lot. No labor performed or materials furnished with the consent or at the request of a particular Owner shall be the basis for the filing of a mechanic's lien claim against any other Lot. If the performance of the labor or furnishing of the materials is expressly authorized by the Association, each Owner shall be deemed to have expressly authorized and consented to such performance of labor and furnishing of materials, and each Owner shall be liable for the payment thereof in a proportionate share of any due and payable indebtedness, as set forth in this Declaration. An Owner shall not be liable for any claims, damages or judgments entered as a result of any action or inaction of the Association other than for mechanic's liens as set forth above. Each Owner's liability for any judgment entered against the Association shall be limited to said Owner's proportionate share of the indebtedness, as set forth in this Declaration, whether collection is sought through Assessment or otherwise.

#### 8.02 Rights of Mortgagees.

(a) Each of the following actions shall require, as of the date such action is taken, the prior written approval of all holders or Owners of a subsequently recorded mortgage or security deed constituting a first mortgage lien on any one or more Lots:

(i) abandonment or termination of the Association or removal of the Property from the provisions of this Declaration, except for removal provided by law, or in the case of destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;

(ii) any amendment to this Declaration which changes the interest of the Owners in the Common Properties;

(iii) use of hazard insurance proceeds for losses to the Common Properties for other than the repair, replacement, or reconstruction of such improvements;

(iv) any amendment to this Article or to any other provision in this Declaration which specifically grants rights to the holders of such first mortgages or security deeds.

(b) Upon written request, any mortgagee subject to this Declaration shall be entitled to:

(i) inspect the books and records of the Association during normal business hours, upon reasonable notice;

(ii) receive a copy of the annual, financial statement of the Association which is prepared for the Association and distributed to the Owner's;

(iii) receive written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings;

(iv) receive written notice of any default in the obligations hereunder of any Owner of such Lot encumbered by such first mortgage lien, not cured within thirty (30) days after notice of such default has been sent to such Owner by the Association; and

(v) receive written notice of any material amendment to this Declaration or the Bylaws of the Association.

However, the Association's failure to provide any of the foregoing to a first mortgagee who has so requested same shall not affect the validity of any action or decision which is related to the foregoing, nor shall the Association have any liability on account of its good-faith failures to so provide.

(c) Upon written request, a first mortgagee of any one or more Lots shall be entitled to timely written notice in the event of any substantial damage or destruction of any part of the Common Properties or if the Common Properties or any portion thereof are made the subject matter of any condemnation or eminent domain proceeding or are otherwise sought to be acquired by a condemning authority. No Owner or other party shall be entitled to priority over such first mortgagee with respect to the distribution to such Owner or other party, with respect to such Lot, of any insurance proceeds payable by reason of such damage or destruction or of the proceeds of any such condemnation award or settlement.

(d) The provisions hereof are in addition to all other rights of mortgagees herein contained or under law.

(e) When notice is to be given to any first mortgagee hereunder, the Board shall also give such notice to the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Veterans Administration, the Federal Housing Administration, the Government National Mortgage Association and any other public or private secondary mortgage market entity participating in purchasing or guaranteeing mortgages of Lots in the Development, if the Board has notice of such participation.

**8.03 Subordination.** The liens provided for in this Declaration shall be subordinate to the lien of any prior recorded mortgage or security deed on the Property or Lot or any portion thereof, or on any interest of such Owner, which mortgage or security deed is recorded prior to the date such lien for unpaid Common Expenses attaches and is owed, or held by any lender, except for the amount of said proportionate share of such Common Expenses which become due and payable from and after the date on which such lender either takes possession of the Lot or interest encumbered by such mortgage or security deed, or accepts a conveyance, transfer or assignment of the Lot or of any interest therein (other than as security) in lieu of any foreclosure of such mortgage or security deed. This provision shall not be amended, modified or rescinded without the prior written consent of all lenders who are the holders or owners of a mortgage or security deed recorded prior to the date of such amendment, modification or rescission.

An Owner or mortgagee of a Lot shall have the right to acquire from the Association a certificate showing the amount of unpaid assessments with respect to the Lot. The Association may not enforce against a mortgagee who relies on the certificate any indebtedness as of that date in excess of the amount shown thereon.

By subordination agreement executed by a majority of the Board, the benefits of this Article may be extended to mortgages other than first mortgages.



## ARTICLE IX

### DEFAULT; REMEDIES

9.1 **Event of Default; Notice.** If any Owner (either by said Owner's own conduct or by the conduct of an occupant of said Owner's Lot) shall violate any provision of this Declaration, the By-laws or the Rules and Regulations, and if such default or violation shall continue for twenty (20) days after written notice to the Owner from the Association, or shall occur repeatedly during any ten (10) day period after such written notice, then such violation shall constitute an event of default ("Event of Default") and the Association shall have the power to issue to said defaulting Owner a notice in writing terminating the rights of said defaulting Owner to occupy, control, use and enjoy the Common Properties and to vote as a Member of the Association.

9.2 **Remedies in the Event of Default.** In an Event of Default, the Association or its successors and assigns, or its agent, shall have each and all of the rights and remedies which may be provided for in this Declaration or the laws of the State of Georgia, or which may be provided or permitted at law or in equity, and may prosecute an action or other proceedings against such defaulting Owner and/or others for enforcement of any lien and the appointment of a receiver for the Lot and ownership interest of such Owner or for damages or injunction or specific performance, or for judgment for payment of money and collection thereof, or the right to take possession of the Lot and such Owner's interest in the Property, and to sell the same, as hereinafter in this Declaration provided, or for any combination of remedies, or for any other relief. All expenses of the Association in connection with any such actions or proceedings, including court costs and attorney's fees and other fees and expenses and all damages, liquidated or otherwise, together with interest thereon at the maximum contract rate per annum permitted by law shall be charged to and assessed against such defaulting Owner until paid, and shall be added to and deemed part of said Owner's respective share of the Common Expenses, and the Association shall have a lien for all of the same, as well as for non-payment of said Owner's respective share of the Common Expenses, upon the Lot and ownership interest in the Common Properties of such defaulting Owner and upon all of said Owner's additions and improvements thereto; provided, however, that such lien shall be subordinate to the lien of any prior recorded first mortgage or security deed on the Lot or any portion thereof, or on any interest of such Owner, except for the amount of the proportionate share of said Common Expenses which became due and payable from and after the date on which the said mortgage owner or holder either takes possession of the Lot or interest encumbered by such mortgage or security deed, accepts a conveyance of any interest therein (other than as a security) or files suit or commences other proceedings to foreclose such mortgage or security deed and causes a receiver to be appointed. In the Event of Default by any Owner, the Board shall have the authority to correct such Default, and to do whatever may be necessary for such purpose and all expenses in connection therewith shall be charged to and assessed against such defaulting Owner, together with interest thereon at the rate aforesaid. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Association. This provision shall not be amended, modified or rescinded without the prior written consent of all lenders who are the holders or owners of a mortgage or security deed recorded prior to the date of such amendment, modification or rescission.

## ARTICLE X: GENERAL PROVISIONS

**10.01 Acceptance of Provisions.** Each Owner, by the acceptance of a deed of conveyance, accepts the same subject to all easements, restrictions, conditions, covenants, reservations, liens, and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all easements, rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations imposed hereby shall be deemed and taken to be covenants running with the land, shall bind any person having at any time any interest or estate in said land and shall inure to the benefit of such person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

**10.02 Notices.** Any notices required or permitted to be given under this Declaration unless otherwise specified shall be either personally hand delivered or sent registered or certified mail with return receipt requested, at the respective Lot address of the Owners or the Association or to such other address as an Owner or the Association may from time to time designate in writing to the Association. Any notice shall be deemed to have been given at the time it is hand delivered or it is placed in the mails with sufficient postage prepaid.

**10.03 Amendments.** This Declaration may be amended in accordance with the following procedures:

- (a) An Amendment to this Declaration may be considered at any annual or special meeting of the Association; provided however, that, if at an annual meeting, notice of consideration of the Amendment and a general description of the terms of such Amendment shall be included in the notice of the annual meeting provided for in Section 5.02, and if a special meeting, a similar notice shall be included in the notice of the special meeting provided for in Section 5.03. Notice of any meeting to consider an Amendment shall also be sent to each Mortgagee listed upon the register of the Association.
- (b) At any such meeting, the Amendment must be approved by an affirmative two-thirds (2/3) vote of those Owners present and voting.
- (c) If an Amendment is approved as set forth in Paragraph (b) of this Section, the Secretary shall mail a true copy of the Amendment to each Owner, informing each Owner that he shall have twenty (20) days from such notice within which to reply, in writing, to the Secretary of the Association and to indicate his approval or disapproval of such Amendment. If seventy-five (75) percent of those Owners responding within said twenty (20) day period shall indicate their approval of the Amendment, it shall be deemed adopted.
- (d) An Amendment adopted under Paragraph (c) of this Section shall become effective upon its recording in the Office of the Clerk of the Superior Court of Catoosa County, Georgia, and the President and Secretary shall execute, acknowledge and record the Amendment and the Secretary shall certify on its face that it has been adopted in accordance with the provisions of this Section; provided that in the event of the disability or incapacity of either, the Vice-President shall be empowered to execute, acknowledge and record the Amendment. The certificate shall be conclusive evidence to any person who relies thereon in good faith, including, without limitation, any Mortgagee, prospective

purchaser, tenant, lienholder or title insurance company that the Amendment was adopted in accordance with the provisions of this Section.

(e) This certificate referred to in Paragraph (d) of this Section shall be in substantially the following form:

### CERTIFICATE

I, \_\_\_\_\_, do hereby certify that I am the Secretary of Willow Creek Estates Homeowners Association and that the within Amendment to the Declaration of Covenants and Restrictions and By-Laws for Willow Creek Estates Homeowners Association was duly adopted by the Owners of said Association in accordance with the provisions of Section 10.03 of said Declaration.

Witness my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Secretary

(f) No Amendment shall be made affecting the Common Properties which is in any manner inconsistent with the permitted uses and purposes for such properties set out in Section 2.13. No Amendment to this Declaration shall be made unless it conforms to any local, county, or state governmental planning and zoning laws and regulations. No Amendment to this Declaration shall be made which shall adversely affect the rights of Mortgagees under Section 8.02.

**11.04 Severability.** The invalidity of any restriction hereby imposed, or any provision hereof, or of any part of any such restriction or provision, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration and all of the terms hereof are hereby declared to be severable.

**11.05 Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a first class residential subdivision community.

**11.06 Conveyance of Interest in Common Properties.** The undivided interest in the Common Properties shall not be separated from the Lot to which such interest appertains and shall be deemed conveyed or encumbered with the Lot even though such interest is not expressly mentioned or described in the deed of conveyance or other instrument.

**11.07 Effective Date.** This Declaration shall be effective upon recordation. These covenants shall be in effect of a period of 25 years from the date hereof and shall automatically be renewed for a successive period of 25 years unless canceled or amended by a two-third majority vote or assent of the Lot owners, evidenced in writing recorded in the Office of the Clerk of the Superior Court of Catoosa County, Georgia.

**11.08 Headings.** The headings of paragraphs and sections in this Declaration are for convenience or reference only and shall not in any way limit or define the content or substance of such paragraphs and sections.

**11.09 Number and Gender.** As used in this Declaration, the singular shall include the plural, and masculine, feminine, and neuter pronouns shall be fully interchangeable, where the context so requires.

**11.10 Perpetuities and Restraints on Alienation.** If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule of property known as the rule against perpetuities, then such provision shall continue in force and effect only until fifty (50) years after the date hereof.

**11.11 Attorney Fees and Court Costs.** In the event any Owner shall violate the restrictions, covenants or obligations herein, the Developer, the Association or other party seeking to enforce restrictions, covenants and obligations shall be entitled to recover, and said violating party agrees to pay, damages or other dues for such violations, including but not limited to reasonable attorney's fees and court costs.

IN WITNESS WHEREOF, Developer has set its hand and affixed its seal and caused this instrument to be adopted and executed as of the \_\_\_\_ day of \_\_\_\_\_, 2005.

Signed, sealed and delivered  
in the presence of:

CATOOSA LAND  
INVESTMENTS, LLC

\_\_\_\_\_  
Witness

By: \_\_\_\_\_

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

Its: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT "A"**

All that tract or parcel of land lying and being in Original Land Lot Nos. \_\_\_\_\_, in the \_\_\_\_\_ District and \_\_\_\_\_ Section of Catoosa County, Georgia and being all that property known and designated as Willow Creek Estates as shown on plat recorded in Plat Book \_\_\_\_\_, page \_\_\_\_\_ in the Office of the Clerk of the Superior Court of Catoosa County, Georgia which said plat is by reference incorporated herein.