

**DECLARATION OF PROTECTIVE COVENANTS
AND PERMANENT MEMBERSHIP FOR BYRNWICK**

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DECLARATION OF PROTECTIVE COVENANTS
AND PERMANENT MEMBERSHIP FOR BYRNWYCK

1. NAME.

The name of the property is Byrnwyck (hereinafter sometimes called "Association"), which property is a residential property owner's development that hereby submits to the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, et seq. (Michie 1982).

2. DEFINITIONS.

Generally, terms used in this Declaration, the Bylaws, and the Articles of Incorporation shall have their normal, generally accepted meanings or the meanings given in the Act or the Georgia Nonprofit Corporation Code. Unless the context otherwise requires, certain terms used in this Declaration, the Bylaws, and the Articles of Incorporation shall be defined as follows:

(a) Act shall mean the Georgia Property Owners' Association Act, O.C.G.A. § 44-3-220, et seq. (Michie 1982), as such act may be amended from time to time.

(b) Additional Property means those Lots as shown on the plats for Byrnwyck which are not subject to the terms of this Declaration, but which shall, upon execution of a consent in accordance with terms of this Declaration, become a portion of the Property.

(c) Articles or Articles of Incorporation mean the Articles of Incorporation of the Byrnwyck Community Association, Inc., as filed with the Secretary of State of the State of Georgia.

(d) Association shall mean Byrnwyck Community Association, Inc. a Georgia nonprofit corporation, its successors or assigns.

(e) Board or Board of Directors shall mean the elected body responsible for management and operation of the Association.

(f) Bylaws mean the Bylaws of the Byrnwyck Community Association, Inc.

(g) Common Property shall mean all easements and real property owned by the Association for the common use and enjoyment of the Members, to the extent provided herein. Such areas shall include, but are not limited to the pool house, pool, the tennis courts and surrounding ground and entry areas.

(h) Common Expenses mean the expenses anticipated or actually incurred by the Association in maintaining, repairing, replacing, improving and operating the Common Property and otherwise for the benefit of the Association and its Members.

(i) Community-Wide Standard means the standard of conduct, maintenance, or other activity generally prevailing in the Byrnwyck Subdivision. Such standard may be more specifically determined by the Board of Directors.

(j) Effective Date means the date as is further defined in Paragraph 3 hereof.

(k) Eligible Mortgage Holder means a holder of a first mortgage secured by a Lot, which Lot is a portion of the Property, who has requested notice of certain items as set forth herein.

(l) Lot means a portion of the property as shown on the plats for Byrnwyck Subdivision that is intended for ownership and use as a single-family dwelling site as shown on the said plats.

(m) Majority means those eligible votes, Members, or other group as the context may indicate totaling more than fifty (50%) percent of the total eligible number.

(n) Member or Permanent Member shall mean all Lot Owners in the Byrnwyck Subdivision whose Lots have been subjected to Permanent Membership in the Association by execution of this Declaration or by written consent recorded in the DeKalb County, Georgia land records, as provided herein, which membership runs with title to the Lot and cannot be separated from the Lot. Any Lot subject to Permanent Membership is a portion of the Property and has been granted privileges of membership as more particularly provided for in Paragraph 5 of this Declaration.

(o) Member Lot shall mean a Lot subjected to Permanent Membership in the Association hereunder and which Lot is, therefore, a portion of the Property.

(p) Mortgage means any mortgage, deed to secure debt, deed of trust, or other transfer or conveyance for the purpose of securing the performance of an obligation, including, but not limited to, a transfer or conveyance of fee title for such purpose.

(q) Mortgagee or Mortgage Holder means the holder of any Mortgage.

(r) Occupant means any Person occupying all or any portion of a dwelling or other property located within the Property for any period of time, regardless of whether such Person is a tenant or the Owner of such property.

(s) Officer means an individual who is elected by the Board to serve as President, Vice President, Secretary, or Treasurer, or such other subordinate officers as the Board may determine necessary.

(t) Owner means the record title holder of a Member Lot, but shall not include a Mortgage Holder.

(u) Person means any individual, corporation, firm, association, partnership, trust, or other legal entity.

(v) Plats shall mean those certain plats recorded in the plat records of DeKalb County, as follows: Plat Book 72, Page 8 (Unit 1); Plat Book 72, Page 15 (Unit 2); Plat Book 74, Page 42 (Unit 3); Plat Book 74, Page 135 (Unit 4); Plat Book 79, Page 101 (Unit 5); Plat Book 76, Page 28 (Unit 6); Plat Book 80, Page 144 (Unit 7).

(w) Property means that real estate in Byrnwyck Subdivision submitted to the provisions of this Declaration by the Owner's execution of this Declaration after the recording of this Declaration or by the recording of a consent subsequent to the date of recording of this Declaration. By recordation of this Declaration, the Common Property is hereby submitted to this Declaration and the Act and shall be deemed a part of the Property.

(x) Senior Member shall mean a Permanent member who meets the eligibility criteria for Senior Membership set forth in Paragraph 5 of this Declaration

3. PROPERTY DESCRIPTION.

The Property subject to this Declaration and the Act is located in Land Lot 328 of the 18th District, being more particularly described in the signatory portion of this Declaration and in Exhibits "A" and "B" attached to this Declaration, which exhibits are specifically incorporated herein by this reference. The Plats are incorporated herein by reference as fully as if the same were set forth in their entirety herein.

Only the real property described in this Paragraph 3 is subject to this Declaration. However, by one or more consent form executed by an Owner of a Lot in Byrnwyck and the Association that is substantially in the form set forth in Exhibit "C" hereto, other real property may be subject to this Declaration.

4. EFFECTIVE DATE.

This Declaration shall be effective only if the following is substantially completed: (1) at least ninety-five (95) Owners have executed this Declaration or before May 31, 2001 (the "Enrollment Period") as Permanent Members of the Association; and (2) this Declaration and such signatures have been recorded in the DeKalb County, Georgia land records, which shall be no later than June 30, 2001; and (3) the President and another officer of the Association have executed the statement which is indicated on the last page of this Declaration in which they certify that the minimum number of required signatures have been obtained. Additional consents, by Owners of Lots within the Additional Property may be recorded at any time and from time to time subsequent to the recording of this Declaration, subject to

the terms of this Declaration. All consents shall be executed by at least one officer of the Association and recorded by the Association.

5. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS.

(a) Membership. Each Person who is the record owner of a fee or undivided fee interest in any Lot within the Byrnwyck Subdivision that submits to Permanent Membership in the Association by executing this Declaration as a Permanent Member shall be a Member of the Association and shall be entitled to vote as set forth herein and in the Bylaws of the Association. Permanent Membership shall be appurtenant to and may not be separated from ownership of any such Membership Lot.

A Permanent Member who executes this Declaration not later than November 1, 2000 shall be eligible for Senior Membership status at any time during their ownership of a Membership Lot upon presentation of evidence to the Board of Directors that: (a) at least one Owner of such Lot is at least fifty-eight (58) years or older; and (b) no person under the age of eighteen (18) years resides in such Owner's dwelling more than six (6) months a year. No other Members shall be eligible for Senior Membership status. The Board shall have the authority to establish fees for Senior Membership as set forth herein.

(b) Yearly Use Passes. In the discretion of the Board, yearly use passes also may be offered to nonresidents as provided for in the Bylaws.

(c) Additional Membership Classes. The Board of Directors may establish additional classes of membership; provided, however, if such classes of membership have voting rights or bind property and successors-in-title to membership, this Declaration shall be amended as provided for in Paragraph 13 to establish such additional classes of membership.

(d) Voting. All Members in good standing shall be entitled to one (1) equal vote for each Member Lot owned. When more than one (1) Person holds an ownership interest in any Member Lot, the vote for such Lot shall be exercised as those Persons determine among themselves and advise the Secretary prior to any meeting. In the absence of such advice, the Member Lot's vote shall be suspended in the event more than one (1) Person seeks to exercise it.

6. ASSESSMENTS.

(a) General. The Association shall have the power to levy assessments or fees against all Members as provided herein and in the Bylaws. The assessments for Common Expenses provided for herein shall be used for the general purposes of maintaining, repairing, replacing, insuring, managing, operating and, in the Board's discretion, improving the Common Property; enforcing this Declaration, paying for utility services serving the Common Property; maintaining a reserve fund for future Common Property maintenance, repairs or improvements; and promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of Lots in the Property and the Members, as may be more specifically authorized from time to time by the Board or the membership as provided herein. Except as otherwise provided herein for Senior Members, each Member Lot is hereby allocated equal liability as all other Member Lots for Common Expenses.

(b) Creation of the Lien and Personal Obligation For Assessments. Each Owner of a Member Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges; (ii) special assessments, such assessments to be established and collected as hereinafter provided; and (iii) specific assessments against any particular Lot or Member which are established pursuant to the terms of this Declaration.

All assessments, together with charges, interest, costs, and reasonable attorney's fees actually incurred, in the maximum amount permitted up to a maximum of Five-Thousand Dollars (\$5,000.00) shall be a charge on such Member Lot and shall be a continuing lien upon the Lot against which each assessment is made. All assessments, charges, interest and attorney fees actually incurred shall be also be the personal obligation of the Person who was the Owner of such Lot at the time when the assessment fell due. Each Owner of a Member Lot and his or her grantee shall be jointly and severally liable for all assessments constituting a lien against the Lot and charges due and payable at the time of any conveyance. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors, which may include acceleration of any unpaid portion of any annual or special assessment for delinquent Members upon ten (10) days written notice.

The liens provided for herein shall have priority as set forth in the Act. The sale or transfer of any Lot pursuant to foreclosure of a first Mortgage shall extinguish the lien for assessments as to payments coming due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter coming due or from the lien thereof. No Member may exempt himself or herself from liability for or otherwise withhold payment of assessments for any reason whatsoever.

(c) Delinquent Assessments. All assessments and related charges not paid on or before the due date established by the Board shall be delinquent, and the Member shall be in default.

i) If the annual assessments or any part or installment thereof is not paid in full within thirty (30) days of the due date, a late charge equal to the greater of ten (\$10.00) dollars or ten (10%) percent of the amount not paid may be imposed without further notice or warning to the delinquent Member, and interest at the highest rate permitted under the Act shall accrue from the due date.

ii) The Association, acting through the Board, may institute suit to collect all amounts due that constitute a lien on the Lot pursuant to the provisions of the Declaration, the Bylaws, and the Act, if the amounts remain unpaid for more than sixty (60) days.

iii) For use passes or other classes of membership, if any, if assessments remain unpaid more than thirty (30) days from the due date, the Association may revoke such person's right to use the Common Property of the Association upon ten (10) days written notice.

iv) If part payment of assessments and related charges is made, the amount received shall be applied first to costs and attorneys fees, as applicable, and then, in order, to late charges, interest, delinquent assessments, and current assessments.

(d) Maximum Assessments; Computation of Operating Budget and Assessment; Capital Expenses.

i) Assessments. The annual assessment fee shall be established pursuant to a budget created and adopted by the Board, covering the estimated costs of maintaining and operating the Common Property during the coming year. The initial annual assessment for Members shall not exceed Five-Hundred Seventy-five (\$575) Dollars per year. The annual assessment for Members who are Senior Members shall be twenty-five (25%) percent less than the Permanent Member assessment, rounded to the closest increment of Five (\$5.00) Dollars. The annual assessment may not be increased above the prior year's assessment without the approval of the Members as provided in subparagraph 6(d)(ii) below.

ii) Computation of Operating Budget and Assessment. It shall be the duty of the Board at least thirty (30) days prior to the beginning of the Association's fiscal year to prepare the budget covering the estimated costs of operating the Common Property during the coming year. The budget shall reflect all amounts to be received from initiation fees, annual dues, assessments, and from all other sources.

The Board shall cause the budget and notice of the annual dues for the following year to be delivered to each Member by regular first class mail or by hand delivery at least thirty (30) days prior to the annual meeting of the Association. The budget, including annual fees, assessments and other charges, shall become effective upon adoption by the Board. Notwithstanding the above, if the proposed budget is increased above the prior year's budget, the budget must be approved by at least a majority of the eligible Members voting in person or by proxy at a duly called meeting of the Members or by ballot as provided for in the Bylaws.

Notwithstanding the above, however, if the Board fails for any reason to determine the budget for the succeeding year or if a budget increase is not approved by the Members, then, until a budget is determined as provided herein, the budget in effect for the current year shall continue for the succeeding year, and the Board may propose a new budget at any time during the year by causing the proposed budget and assessment to be delivered to the Members, which budget must be approved as provided above if the budget is increased above the prior years budget.

iii) Capital Expenses. Any capital expense must be approved by at least two-thirds (2/3) of the eligible Members voting in person or by proxy at a duly called meeting of the Members or by ballot as provided for in the Bylaws.

Notwithstanding anything to the contrary herein, if any Member transfers a Lot, there shall be no refund of any dues or assessments paid and the purchaser and seller may allocate the annual assessment among themselves in a manner which they shall determine.

(f) Special Assessments. In addition to the annual assessment provided for above, the Board may at any time levy a special assessment against all Members for: increased operating expenses; repairs; or capital expenses approved by the Membership. Prior to becoming effective, any special assessment for increases in annual operating expenses or repairs first shall be approved by the affirmative vote of a majority of eligible Members present and voting at a duly called annual or special meeting of the Association called for such purpose or by ballot specifying that purpose. Any special assessments for capital expenses shall first be approved by two-thirds (2/3) of eligible Members present and voting at a duly called annual or special meeting of the Association called for such purpose or by ballot specifying that purpose. Any special meeting to consider a special assessment shall require at least thirty (30) days prior written notice sent by regular first class mail or hand delivered. If a ballot is sent, the return date shall be no earlier than thirty days from the date of sending the ballot. Notice of any special assessment shall be sent to all Members.

(g) Initiation/Capital Fund Fee. Subsequent to the Enrollment Period, the Board, in its discretion, may require a non-refundable initiation/capital fund fee in order to become a Member, not to exceed Two Thousand Five Hundred Dollars (\$2,500.00). The Board shall endeavor to establish initiation/capital fund fees that are equal among new Members.

(h) Capital Budget and Reserve Contribution. As part of the budget, the Board may fix and establish an annual reserve or capital contribution, in an amount sufficient to permit meeting the projected capital and future needs of the Association.

(i) Statement of Account. Any Member, Mortgage holder, or a Person having executed a contract for the purchase of a Member Lot, or a lender considering a loan to be secured by a Member Lot, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments due and unpaid, including any late charges, interest, fines, or other charges against said Member Lot. The Association shall respond in writing within five (5) days of receipt of the request for a statement; provided, however, the Association may require the payment of a fee, not exceeding ten (\$10.00) dollars, or such higher amount as authorized by the Act, as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Lot as of the date specified therein.

(j) Specific Assessments. In the discretion of the Board, any Association Common Expenses occasioned by the conduct of less than all of those entitled to occupy all of the Member Lots or by the licensees or invitees of any such Lot or Lots, including but not limited to the cost of damage caused by the willful or negligent acts of a Member, any member of the Member's family, or the Member's tenants, guest or invitees resulting in Common Expense to the Association and reasonable attorneys fees actually incurred by the Association, may be specially assessed against such Member Lot or Lots. Specific assessments may also be assessed against holders of yearly use passes. Failure of the Board to exercise its authority under this Paragraph shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to do so in the future.

(k) Surplus Funds and Common Profits. Common profits from whatever source shall be applied to the payment of Common Expenses. Any surplus funds remaining after the application of such common profits to the payment of Common Expenses shall, at the Board's option, either be distributed equally to the those members contributing to the budgets or credited to the next assessment chargeable to such members, or added to the Association's reserve account.

7. ASSOCIATION RIGHTS AND RESTRICTIONS.

The Association, acting through its Board of Directors, shall have the right and authority, in addition to all other rights it may have:

- (a) to make and to enforce reasonable rules and regulations governing the use of the Common Property;

(b) to enforce the provisions of this Declaration and the Bylaws and rules and regulations. These powers, however, shall not limit any other legal means of enforcing the Declaration, Bylaws and rules and regulations by either the Association or, in an appropriate case, by an aggrieved Member;

(c) to grant permits, licenses, utility easements, and other easements, permits, public rights-of-way or licenses necessary for the proper maintenance or operation of the Common Property under, through, or over the Common Property, as may be reasonably necessary to or desirable for the ongoing development and operation of the Common Property, subject to the provisions set forth in this Declaration;

(d) to control, manage, operate, maintain, replace and, in the Board's discretion, improve all portions of the Common Property in accordance with the Declaration and Bylaws;

(e) to deal with the Common Property in the event of damage or destruction as a result of casualty loss, condemnation or eminent domain, in accordance with the provisions of this Declaration;

(f) to represent the Members in dealing with governmental entities on matters related to the Common Property;

(g) to acquire, hold and dispose of tangible and intangible personal property and real property.

8. INSURANCE.

(a) The Association's Board or its duly authorized agent shall have the authority to and, if reasonably available, shall obtain insurance for all insurable improvements on the Common Property. This insurance shall include fire and extended coverage, including coverage for vandalism and malicious mischief and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

(b) The Board shall obtain a public liability policy applicable to the Common Property covering the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents in their capacities as such, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least One Million (\$1,000,000.00) Dollars.

(c) Premiums for all insurance obtained by the Association shall be a Common Expense of the Association. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

(d) All such insurance coverage obtained by the Board shall be written in the name of the Association, as trustee, for the benefit of the Association and its Members.

(e) The Board, in its reasonable discretion, also may maintain as a Common Expense a fidelity bond or similar coverage on directors, officers, employees or other Persons handling or responsible for the Association's funds, in an amount determined in the Board's business judgment.

9. REPAIR AND RECONSTRUCTION.

In the event of damage to or destruction of all or any part of the Common Property as a result of fire or other casualty, unless eighty (80%) percent of the Members vote not to proceed with the reconstruction and repair of the structure, the Board or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the structure.

(a) Cost Estimates. Immediately after a fire or other casualty causing damage to the Common Property, the Board shall obtain reliable and detailed estimates of the cost of repairing and restoring the structures thereon to substantially the condition which existed before such casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Such costs may also include professional fees and premiums for such bonds as the Board determines to be necessary.

(b) Source and Allocation of Proceeds. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair, as determined by the Board, or if at any time during the reconstruction and repair or upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, a special assessment shall be made against all of the Members without the necessity of a vote of the Members or compliance with Paragraph 6(f) above. If after repair and reconstruction is completed there is a surplus of funds, such funds shall be common funds of the Association to be used as directed by the Board.

(c) Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the plans and specifications under which the Common Property was originally constructed, except where changes are necessary to comply with current applicable building codes.

(d) Construction Fund. The net proceeds of the insurance collected on account of a casualty and the funds collected by the Association from assessments against Members on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair in the manner set forth in this Paragraph to be disbursed by the Association in appropriate progress payments to such contractor(s), supplier(s), and personnel performing the work or supplying materials or services for the repair and reconstruction of the buildings as are designated by the Board.

10. MORTGAGEE'S RIGHTS

(a) Mortgagee Approval of Actions. Unless at least two-thirds (2/3) of the first Mortgagees or at least two-thirds (2/3) of the Members give their consent, the Association shall not:

(i) by act or omission seek to abandon or terminate the Common Property or the Association; (ii) change the pro rata interest or obligations of any individual Lot for the purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; (iii) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Property (the granting of utility easements or easements for public purposes consistent with the intended use of the Common Property by the Association or architectural changes, as authorized herein, shall not be deemed a transfer within the meaning of this clause); or (iv) use hazard insurance proceeds for losses to any portion of the Common Property for other than the repair, replacement, or reconstruction of such portion of the Common Property.

The provisions of this Paragraph shall not be construed to reduce the percentage vote that must be obtained from Mortgagees or Members where a larger percentage vote is otherwise required hereunder for any of the actions contained in this Paragraph.

(b) Mortgagee Assessments Upon Foreclosure. Where the Mortgagee holding a first Mortgage of record or other purchaser of a Member Lot obtains title pursuant to judicial or nonjudicial foreclosure of the Mortgage, it shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Lot which became due prior to such acquisition of title. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from the Members, including such acquirer, its successors and assigns if subject to the assessment. Additionally, such acquirer shall be responsible for all charges accruing subsequent to the passage of title, including, but not limited to, all charges for the month in which title is passed.

(c) Mortgage Notices. Upon written request to the Association, identifying the name and address of the holder and the Lot number or address, any holder of a first mortgage secured by a Member Lot in the Property who has requested notice of certain items as set forth in this Declaration (hereinafter "Eligible Mortgage Holder") will be entitled to timely written notice of: (i) any condemnation loss or any casualty loss which affects a material portion of the Common Property; (ii) any delinquency in the payment of assessments or charges owed by an Owner of a Member Lot subject to a first Mortgage held by such Eligible Mortgage Holder which remains unsatisfied for a period of sixty (60) days, and any default in the performance by an individual Lot Owner of any other obligation under the Declaration or bylaws which is not cured within sixty (60) days; (iii) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or (iv) any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders, as specified herein.

(d) Any holder of a first Mortgage shall be entitled, upon written request, to receive within a reasonable time after request, a copy of the financial statement of the Association (if prepared) for the immediately preceding fiscal year, free of charge to the Mortgagee so requesting.

11. USE AND ENJOYMENT OF THE COMMON PROPERTY.

(a) General. Each Member shall be responsible for ensuring that the Member's family, guests, tenants and occupants comply with all provisions of this Declaration, the Bylaws and the rules and regulations of the Association. In addition to any rights the Association may have against the Member's family, guests, tenants or occupants, the Association may take action under this Declaration against the Member as if the Member committed the violation in conjunction with the Member's family, guests, tenants or occupants.

(b) Use and Enjoyment. Every Member shall have a right to use and enjoyment in and to the Common Property subject to the following provisions:

(i) the right of the Association to charge other fees for the use of any portion of the Common Property, to limit the number of guests and tenants of Members and others who may use the Common Property, to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by a Member, his or her family, tenants, guests, and invitees and others, to create additional classes of membership with such rights, duties and obligations as may be determined by the Association, to grant licenses to use and enjoy the Common Property to any membership class;

(ii) the right of the Association to suspend the voting rights of a Member, and the right of the Association to suspend the right of any Member to use the Common Property, including the recreational facilities for any period during which any assessment remains unpaid, and for a reasonable period of time for an infraction of the Declaration, Bylaws, or rules and regulations; and the right of the Association to levy fines for infraction of the Declaration, Bylaws or rules and regulations as more particularly provided in the Bylaws;

(iii) the right of the Association to dedicate, partition, subdivide, encumber, sell or transfer all or any portion of the Common Property subject to such conditions as may be agreed to by two-thirds (2/3) of the Members of the Association.

(c) Use of Common Property. Use restrictions regarding use of the Common Property are as follows and also as may be adopted by the Board in rules and regulations and as specified in the Bylaws. There shall be no obstruction of the Common Property, nor shall anything be kept, parked or stored on any part of the Common Property without prior written Board consent, except as specifically provided herein or in the Association's rules and regulations.

With prior written Board approval or its designee, and subject to any restrictions imposed by the Board or its designee, a Member or Members may reserve portions of the Common Property for use for a period of time as set by the Board or its designee. Any such Member or Members who reserve a portion of the Common Property hereunder shall assume, on behalf of himself/herself/themselves and his/her/their guests, occupants and family, all risks associated with the use of the Common Property and all liability for any damage or injury to any person or thing as a result of such use. The Association shall not be liable for any damage or injury resulting from such use unless such damage or injury is caused solely by the willful acts or gross negligence of the Association, its agents or employees.

The Member transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Member has to use the Common Property, including, but not limited to, the use of any and all recreational facilities.

(d) Prohibition of Damage, Nuisance and Noise. Noxious, destructive or offensive activity shall not be carried on upon the Common Property. Each Member shall refrain from any act or use of the Common Property which could reasonably cause embarrassment, discomfort, nuisance or annoyance to other Members or their guests, tenants or invitees. No Member may use or allow the use of the Common Property in any way or for any purpose which may endanger the health or unreasonably annoy or disturb other Members, their guests, tenants or invitees or in such a way as to constitute, in the Board's sole opinion, a nuisance. Nothing herein, however, shall be construed to affect the rights of an aggrieved Member to proceed individually for relief from interference with his or her property or personal rights.

12. DURATION.

The covenants and conditions of this Declaration shall run with and bind the Property and the Common Property perpetually to the extent provided in the Act.

Notwithstanding anything herein to the contrary, neither (1) the foreclosure of one or more Member Lots subsequent to the recording of this Declaration, nor (2) the execution of one or more consents in a defective manner, nor (3) that as a result of foreclosure and/or defective execution, there are less than ninety-five (95) Permanent Members at any time or from time to time, shall effect the validity and enforceability of this Declaration.

13. AMENDMENT.

Except where a higher vote is required for action under any other provisions of this Declaration, in which case such higher vote shall be necessary to amend such provision, this Declaration may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the Members of the Association holding at least sixty-six and two-thirds (66-2/3%) percent of the total eligible vote of such Members. Notice of a meeting, if any, at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. No amendment shall be effective until certified by the President and Secretary of the Association and recorded in the DeKalb County, Georgia land records.

Any action to challenge the validity of an amendment adopted under this Paragraph must be brought within one (1) year of the effective date of such amendment. No action to challenge such amendment may be brought after such time.

14. GENERAL PROVISIONS.

(a) Enforcement. As more particularly provided for herein, each Member shall comply strictly with the Declaration, Bylaws, the rules and regulations as they may be lawfully amended or modified from time to time. The Board of Directors may impose reasonable fines or other sanctions, as more particularly provided for in Article V of the Bylaws. The Board shall also have such additional enforcement rights as outlined in Article V, Section 5 of the Bylaws. Failure to comply with this Declaration, the Bylaws or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board of Directors, on behalf of the Association, or, in a proper case, by an aggrieved Member. The Association shall be entitled to all costs, including, but not limited to attorney fees actually incurred, to enforce provisions of the Declaration, Bylaws and rules and regulations. Failure by the Association or any Member to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter.

(b) Security. The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve safety on the Common Property; however, each Owner, for himself or herself and his or her tenants, guests, licensees, and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security on the Common Property. It shall be the responsibility of each Owner to protect his or her person and property and all responsibility to provide security shall lie solely with each Member. The Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

(c) Discrimination. No action shall be taken by the Association or the Board of Directors which would unlawfully discriminate against any person on the basis of race, creed, color, national origin, religion, sex, familial status or handicap.

(d) Implied Rights. The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

15. SEVERABILITY.

Invalidation of any one of these covenants or restrictions by judgment or court order or otherwise shall in no way affect the application of such provision to other circumstances or affect any other provision(s), which shall remain in full force and effect.

16. BYLAWS.

Each Person who executes this Declaration also agrees and consents to the Amended and Restated Bylaws for Bymwyck Community Association, Inc.

17. PREPARER.

This Declaration was prepared by Candyce D. Cavanagh, Weissman, Nowack, Curry & Wilco, P.C., Two Midtown Plaza, 1349 West Peachtree Street, Atlanta, Georgia 30309.

IN WITNESS WHEREOF, the undersigned officers of Byrnwyck Community Association, Inc., hereby certify that the above Declaration has been executed by at least ninety-five (95) Permanent Members.

This ___ day of _____, 20__.

BYRNWYCK COMMUNITY ASSOCIATION, INC.

By: _____ [SEAL]
President

Attest: _____ [SEAL]
Secretary

[CORPORATE SEAL]

Signed, sealed, and delivered
this _____ day of _____,
20____ in the presence of:

WITNESS

NOTARY PUBLIC

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[ADDITIONAL SIGNATURES ON FOLLOWING PAGES]

[Additional signatory to Declaration]

The undersigned Owner(s) is/are the record Owner(s) and holder of title in fee simple to a Lot within the Byrnwyck Subdivision in DeKalb County, Georgia, located at the address described below, and more particularly shown as Lot ____, as located in Land Lot 328, 18th District, and as shown on the plat of survey for Byrnwyck Subdivision recorded in Plat Book ____, Page ____, DeKalb County, Georgia records such plat being incorporated herein by this reference.

Signed, sealed and delivered
this ____ day of _____,
20 ____.

Witness

[NOTARY SEAL]

Signature of Owner

Print or Type Full Name of Owner

Street Address

Signature of Co-Owner

Print or Type Full Name of Owner

Signed, sealed and delivered
this ____ day of _____,
20 ____.

Witness

[NOTARY SEAL]

EXHIBIT "B"

Common Property Submitted

All that tract or parcel of land lying and being in Land Lot 328 of the 18th District, DeKalb County Georgia conveyed to Byrnwyck Swim & Tennis Club, Inc. (n/k/a Byrnwyck Community Association, Inc.) by Limited Warranty Deed recorded in Deed Book 4895, Page 551 and being more particularly described in said deed:

EXHIBIT "C"

STATE OF GEORGIA
COUNTY OF DEKALB

Index in Grantor Index Owner's Name(s): _____
Index in Grantor and Grantee Index Also Under:
Byrnwyck Community Association, Inc.

Cross Reference Owner's Deed: Deed Book _____
Page _____

CONSENT FORM TO THE DECLARATION OF PROTECTIVE COVENANTS FOR
BYRNWYCK AND OWNER SUBMISSION TO MEMBERSHIP IN
BYRNWYCK COMMUNITY ASSOCIATION, INC.

WHEREAS, the undersigned owner(s) (hereinafter referred to as "Owner") is the record owner and holder of title in fee simple to a Lot as defined in the Declaration of Protective Covenants and Permanent Membership for Byrnwyck (hereinafter "Declaration") in DeKalb County, Georgia, located at the address described below, and more particularly shown as Lot _____, as located in Land Lot _____, _____ District, _____ Section, as shown on the plat of survey for Byrnwyck subdivision recorded in Plat Book _____, Page _____, DeKalb County, Georgia records (hereinafter "Owner's Property") incorporated herein by this reference; and

WHEREAS, Owner desires to submit Owner's Property to the Declaration of Protective Covenants and Permanent Membership of the Association, as defined in the Declaration;

NOW, THEREFORE, Owner does hereby consent, on behalf of the Owner, Owner's successors, successors-in-title, heirs, and assigns, that from and after the date of this Consent, Owner's Property shall be owned, held, transferred, sold, conveyed, used, occupied, mortgaged, or otherwise encumbered subject to all of the terms, provisions, covenants, and restrictions contained in the Declaration, as a Permanent Member of the Association, all of which shall run with the title to Owner's Property and shall be binding upon all persons having any right, title, or interest in Owner's Property, their respective heirs, legal representatives, successors, successors-in-title, and assigns. Owner understands and acknowledges that, by submitting Owner's Property to Permanent Membership (as identified on this consent and as defined in the Declaration) in the Association, Owner is hereby subjecting Owner's Property to mandatory assessment in favor of the Association, with lien rights afforded therefor, in accordance with the Declaration.

Signed, sealed, and delivered this _____ day of _____, 20____.

Signature of Owner

Witness

Print or Type Full Name of Owner(s)

Notary Public

Signature of Co-Owner

[NOTARY SEAL]

Street Address

THIS PORTION TO BE COMPLETED BY ASSOCIATION UPON RETURN FROM OWNERS:
Signed, sealed, and delivered this _____ day of _____, 20____.

Approved by:
BYRNWYCK COMMUNITY ASSOCIATION, INC.

Witness

By: _____
Its: President

[CORPORATE SEAL]

Notary Public

[NOTARYSEAL]

[FOR SUBSEQUENT ADDITIONS]

Comment [BDB1]: