

Amend Rec AB 4618 pg 287

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BOOK 4545 PAGE 251

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GARY R. HUGHES, CLERK

DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR
PERRIN OAKS SUBDIVISION

This Declaration of Covenants, Conditions, Restrictions and Easements is made this 17th day of September, 1987, by LANIER DEVELOPMENT ASSOCIATES, a Georgia general partnership (hereinafter referred to as "Declarant");

W I T N E S S E T H :

WHEREAS, Declarant is the owner of the real property described in Section 1 of Article II of this Declaration; and

WHEREAS, Declarant desires to subject said real property described in Section 1 of Article II hereof to the provisions of this Declaration;

NOW, THEREFORE, Declarant hereby declares that the real property described in Section 1 of Article II of this Declaration, including the improvements constructed or to be constructed thereon, is hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments and liens (sometimes referred to herein collectively as "Covenants and Restrictions") hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to the real property hereby or hereafter made subject hereto, and shall be binding on all persons having any right, title or interest in all or any portion of the real property made subject hereto, their respective heirs, legal representatives, successors, successors in title and assigns, and shall inure to the benefit of each and every owner of all or any portion thereof.

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ARTICLE I
DEFINITIONS

Unless the context shall prohibit, certain words used in this Declaration shall have the definitional meaning set forth as follows:

Section 1. "Association" shall mean and refer to Perrin Oaks Homeowners' Association, Inc., a Georgia nonprofit corporation to be formed by Declarant, its successors and assigns.

Section 2. "Common Properties" shall mean and refer to all real and personal property now or hereafter owned or acquired for the common benefit, use and enjoyment of the Owners, such as the subdivision entry island, surface water drainage lines, detention pond, and the subdivision sign, each of which shall be identified on any development plat of the properties.

Section 3. "Declarant" shall mean and refer to the developer, Lanier Development Associates. From and after the time the ownership of the common property is conveyed to the Association, the term "Declarant" shall also refer to the Association.

Section 4. "Lot" shall mean and refer to the lots created by recorded subdivision plat from the properties described in Exhibit "A". The term shall also refer to the property created by any resubdivision that may be permitted under Section 2 of Article VI hereof.

Section 5. "Owner" shall mean and refer to the record owner of each lot, whether one or more persons or entities, but excluding in all cases any party holding an interest merely as security for the performance of an obligation.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

The real property which is, by the recording of this Declaration, subjected to the covenants, conditions, restrictions, easements, assessments and liens hereafter set forth and which, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied and mortgaged or otherwise encumbered subject to this Declaration is the real property described in Exhibit "A" attached hereto and by reference made a part hereof, being known as Perrin Oaks Subdivision.

ARTICLE III

COMMON PROPERTIES

Section 1. Ownership and Control. Subject to the provisions herein on transfer to the Association, the ownership of all the common properties, including the facilities thereon, shall be exclusively in the Declarant and no other person shall, by the recording of this Declaration, by the recording of any plat of survey, or by any permissive use, have any proprietary right, title or interest in and to the common properties. Except as herein expressly provided to the contrary, Declarant shall have complete and sole control and authority to manage and maintain the common properties in such manner as it sees fit.

Section 2. Transfer to Association. Declarant shall transfer its ownership of the common properties to the Association on the earlier of the following events: (a) at such time as two-thirds (2/3) of all lots have been sold by Declarant; or (b) seven (7) years from the date of this Declaration (September 17, 1987); provided, however,

that Declarant shall have the right to transfer prior to either of these events in Declarant's discretion.

ARTICLE IV

ASSESSMENTS

Section 1. Purpose of Assessments. The assessments provided for herein shall be used for the improvement, maintenance and operation of the common properties, including but not limited to the payment of taxes and insurance thereon, repair, replacement and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof, as well as for the establishment and maintenance of one or more reasonable reserve funds for such purposes as to cover unforeseen contingencies or deficiencies, or for emergency expenditures with respect to the common properties as may be authorized from time to time by the Declarant. The assessments may also be used for administration expenses (including but not limited to professional services and costs associated with the administration of these covenants) and for the furnishing of services provided for the common good.

Declarant shall be authorized to establish from time to time a reasonable amount which shall be contributed as a part of the assessment for capital purposes. As collected, such capital contributions shall be deposited in a separate capital account with separate records maintained therefor and disbursements therefrom shall be only for capital purposes as determined from time to time by Declarant.

Section 2. Creation of the Lien and Personal Obligation for Assessments. Each lot now or hereafter subjected to this Declaration is subject to a lien and permanent charge in favor of Declarant for the annual assessment set forth in Section 3

of this Article IV. Such assessments, together with such interest thereon and costs of collection thereof as herein provided, shall be a charge on and a continuing lien upon the lot against which each such assessment is made. Such lien shall be perfected by filing of record in the Office of the Clerk of the Superior Court of Gwinnett County a claim of lien. The claim of lien shall be substantially in the form attached hereto as Exhibit "B", and by this reference, made a part hereof. Also, each owner shall be personally liable for the portion of any assessment coming due while he is the owner of a lot, and his grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of a conveyance but without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefor.

Any such assessment not paid by the due date shall bear interest from the due date at the maximum rate allowable under Georgia law, and Declarant may bring legal action against the property owner personally obligated to pay the same and/or foreclose its lien against the lot to which it relates. In either of such events, Declarant shall also be entitled to recover attorneys fees in an amount equal to fifteen (15%) percent thereof, and all costs of collection. Each property owner, by his acceptance of a deed or other conveyance to a lot, vests in Declarant or its agent the right and power to bring all actions against him personally for the collection of such charges as a debt and to foreclose the aforesaid lien in any appropriate proceeding in law or in equity. Declarant shall have the power to bid in the lot at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. No property owner may be relieved from liability for the

assessments provided herein by nonuse of the common properties or by abandonment of his lot, or otherwise.

Section 3. Annual Assessments. The annual assessment payable to Declarant for common expenses and capital contributions shall be determined as follows:

A. Common Expenses. Not later than December 1 of each calendar year, Declarant shall estimate and prepare a budget for the ensuing calendar year for the total of all common expenses anticipated during such year, which expenses shall be paid by annual assessments. If said estimated sum proves inadequate for any reason then, Declarant may levy at any time in the calendar year a further assessment for common expense. If for any reason an annual budget is not made as required hereby, that portion of the annual assessment for common expense for the ensuing calendar year shall remain the same as for the previous calendar year.

B. Capital Contributions. In addition to the amount which shall be paid for common expense as provided in Subsection 1 above, Declarant shall also be authorized to establish an amount which, as part of the annual assessment, shall be contributed during the ensuing calendar year for capital purposes. If, for any reason, Declarant does not make a determination as to the amount of capital which shall be contributed during the ensuing calendar year, then that portion of the annual assessment for contribution to capital for the ensuing calendar year shall remain the same as for the previous calendar year.

C. Allocation. Unless otherwise specified by Declarant, each installment made by a lot owner on the annual assessment payable by such owner shall be allocated

to the common expense fund and to the capital reserve account on a prorata basis, according to the amount to be paid for common expenses and the amount, if any, to be contributed to capital in the particular calendar year.

D. Due Dates. The annual assessments payable to Declarant, as provided for in this Article IV, shall be established on a calendar year basis and shall commence as to each lot as of the first day of the month next following the month in which title to such lot is conveyed by Declarant. The first annual assessment payable to Declarant shall be adjusted according to the number of days remaining in the calendar year as of the commencement date. The due date of subsequent annual assessments shall be March 1 of each year.

Section 4. Uniform Rate of Assessment. Assessments must be fixed at a uniform rate for all lots. Declarant shall, upon demand at any time, furnish to any owner liable for any such assessment a certificate in writing signed by an officer of Declarant, setting forth whether the same has been paid. A reasonable charge, as determined by Declarant, may be made for the issuance of the certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 5. Priority of Lien. The lien of the assessments provided for in this Article IV shall be prior and superior to all other liens except only (A) ad valorem taxes and (B) all sums unpaid on a first mortgage, if any, filed of record in the Office of the Clerk of the Superior Court of Hall County. The sale or transfer of any lot shall not affect the assessment lien. No such sale or transfer shall relieve the acquirer of title, and the successors in title and assigns

thereof from liability for any assessment thereafter becoming due or the lot from the lien thereof. Provided, however, Declarant may at any time, either before or after a first mortgage is placed on a lot, waive, relinquish or quit claim in whole or in part the right of Declarant to assessments provided for herein with respect to such lot coming due during the period while such lot is or may be held for liquidation by the first mortgagee pursuant to such sale or transfer.

Section 6. Exempt Property. Notwithstanding the commencement date otherwise established by Section D of this Article IV, all lots made subject to this Declaration shall be exempt from the assessments created herein until conveyed by Declarant to another lot owner. All common properties, including any lot which may be designated for use as such by Declarant, shall be exempt from the assessments, charges and liens created herein.

ARTICLE V

ARCHITECTURAL STANDARDS

All property which is now or may hereafter be subject to this Declaration is subject to architectural and environmental review. This review shall be in accordance with this Article and such other standards as may be promulgated by this Declaration and by the Design Review Committee created hereby.

Section 1. Design Review Committee. The Design Review Committee (DRC) shall have exclusive jurisdiction over all new construction, modification to existing improvements as defined herein on any portion of the properties, and on authority for the removal of trees and shrubs. The DRC shall promulgate architectural and environmental standards and applicable procedures. It shall make both available to owners, builders,

and developers who seek to engage in development of or construction or alterations upon any lot and shall conduct its operations in accordance therewith. The Declarant shall appoint the members of the DRC which shall consist of no less than three (3) members, none of whom shall be required to be lot owners, all of whom shall serve at the pleasure of Declarant or subject to such procedures as Declarant may establish.

Section 2. Improvements Covered. Jurisdiction of the DRC is intended to cover all improvements proposed for construction or modification on the common properties and the individual lots. Without limiting the generality of the foregoing, but by way of illustration, these provisions shall apply to residences, outbuildings of any sort, mailboxes, fences and walls.

Section 3. Procedures. The DRC may promulgate detailed standards and procedures governing their areas of responsibility and practice. Subject to the provisions of Section 3 hereof, the DRC shall adopt and uniformly apply standards and procedures, but such standards and procedures may be altered, modified or updated from time to time as the DRC may determine to be in the best interests of the subdivision as a whole and consistent with the larger objectives of design compatibility and sound site planning. In the event the DRC fails to approve or to disapprove plans submitted to it pursuant to the standards and procedures promulgated by the DRC or to request additional information reasonably required within thirty (30) days after submission, the plans shall be deemed approved.

ARTICLE VI

USE RESTRICTIONS

Section 1. Residential Use. Unless otherwise designated by Declarant on a recorded plat, each lot shall be used only for single family detached residential purposes.

Section 2. Subdividing Lots. No lot shall be subdivided, or its boundary lines changed, except with the express written consent of Declarant first had and obtained. However, Declarant hereby reserves to itself, its successors and assigns, the right to replat any lot shown on any recorded plat prior to delivery of a deed therefor to a property owner to create a modified lot or lots. The Covenants and Restrictions herein shall apply to each lot so created thereby.

Section 3. Animals and Pets. No stable, poultry house or yard, rabbit hutch or similar structure shall be constructed or allowed to remain on any lot, nor shall livestock of any nature or classification whatsoever be kept or maintained on any lot. However, household pets shall be permitted, provided they are not raised for commercial purposes. Structures for the care, housing or confinement of any pets shall be approved by the DRC.

Section 4. Motor Vehicles, Trailers, Boats, Etc. Mobile homes, truck campers, trailers of any kind and boats or motor vehicles shall not be parked upon any portion of the common property. Mobile homes, truck campers, trailers of any kind and boats shall not be parked or stored on individual lots except in such manner that they are totally shielded from vision from the street or adjoining lots.

Section 5. Waste Material Containers. No rubbish, trash, garbage or other waste materials shall be kept or permitted upon the common properties except in sanitary containers which

may be located by Declarant in appropriate areas. Containers for garbage or other refuse on individual lots shall be underground or in a screened sanitary enclosure as approved by DRC which must be compatible in appearance and location to the previously constructed house. Any such screened sanitary enclosure must exceed in height by at least one (1) foot any garbage containers placed or to be placed therein. Incinerators for garbage, trash or other refuse shall not be used.

Section 6. Prohibited Activities. Noxious or offensive activities shall not be carried on on the common property or in any facility located thereon or on individual lots. Each lot owner, his family, visitors, guests, servants and agents shall refrain from any act or use of the common properties, the facilities, or individual lots which could reasonably cause embarrassment, discomfort, annoyance or nuisance to others, or which could result in the cancellation of insurance on any portion of the common property, or which would be in violation of any law or governmental code or regulation. No lot shall be used for a business purpose.

Section 7. Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices which might tend to cause disorderly, unsightly or unkempt conditions, shall not be pursued or undertaken on any portion of the common properties or on any lot in a location visible to a street or an adjoining lot.

Section 8. Ongoing Maintenance. All lots, together with the exterior of all improvements located thereon shall be maintained in a neat and attractive condition by their

respective property owners. Such maintenance shall include, but shall not be limited to, painting, repairing, replacing and caring for roofs, gutters, downspouts, building surfaces, trees, shrubs, grass, walks and other exterior improvements. Upon the failure or refusal of any lot owner to maintain his lot and the exterior of all improvements located thereon in a neat and sound condition, Declarant may, after fourteen (14) days' notice to such owner, enter upon such lot and perform such exterior maintenance as Declarant, in the exercise of its sole discretion, may deem necessary or advisable. Such lot owner shall be personally liable to Declarant for the direct and indirect cost of such maintenance, and the liability for such cost shall be a permanent charge and lien upon such lot enforceable by Declarant by any appropriate proceeding in law or in equity. Although notice given as herein provided shall be sufficient to give Declarant the right to enter upon such lot and perform such maintenance, entry for such purposes shall be only between the hours of 7:00 a.m. and 6:00 p.m. on any day except Sunday.

Section 9. Governmental Regulations. All governmental building codes, health regulations, zoning restrictions and the like applicable to the common property and lots shall be observed. In the event of any conflict between any provision of any such governmental code, regulation or restriction and any provision of this Declaration, the more restrictive provision shall apply.

Section 10. Construction and Sale. Notwithstanding any provisions contained in the Declaration to the contrary, it shall be expressly permissible for Declarant and any builder (if other than Declarant) to maintain and carry on, during the period of development, construction and sale, upon such

portion of the properties as Declarant may deem necessary, such facilities and activities as in the sole opinion of the Declarant may be required, convenient, or incidental to such development, construction, and sale, including, but without limitation, business offices, signs, model residences, and sales offices. The right to maintain and carry on such facilities and activities shall include specifically the right to use residences owned by Declarant or such builder as model residences and sales offices.

Section 11. Signs. No signs of any kind or any billboards or high and unsightly structures shall be erected or displayed to public view on any lot, except that after obtaining written permission of Declarant, its successors or assigns, one sign of not more than two (2) square feet may be used to advertise the property for sale and, subject to such written permission, appropriate signs may be used by a builder to advertise property during construction and sales. The Declarant shall be authorized to withhold its approval or consent until information as to the size, style, and color of any proposed sign permitted hereunder is furnished.

Section 12. Temporary Structures. Neither a temporary or permanent residence shall be established on any lot in a trailer, mobile home, basement, tent, shack, garage, barn or any other out building. No residence of a temporary character shall be permitted under any circumstances.

Section 13. Size of Dwellings. Dwellings erected on any lot shall have not less than one thousand, seven hundred (1,700) square feet of floor space on the main floor with a ceiling height of not less than eight (8) feet in all enclosed, heated, habitable areas. The floor space requirement shall be exclusive of any space in garages, carports and finished

basements. This space requirement may be modified as follows: In two story buildings having not less than two thousand, one hundred (2,100) square feet of floor space in habitable areas, the main floor requirement may be reduced to one thousand, one hundred (1,100) square feet of area exclusive of garages, finished basements, and other nonhabitable areas.

No dwelling shall be over two stories, excluding basement.

Section 14. Approved Builders List. Only contractors on a list approved by Declarant will be permitted to handle construction on property subject to this Declaration.

Section 15. Building Location. All buildings erected on lots covered by this Declaration shall conform to the minimum setback line as shown on a recorded plat of said property and in no event shall any building be erected nearer than seventy-five (75) feet from the front lot line, or nearer than forty (40) feet from the rear lot line, or nearer to a side lot line than fifteen (15) feet. Declarant reserves the right to impose additional restrictions by deed.

An owner who contends that his lot cannot be developed in accordance with the set back requirements from front lot line without substantial economic hardship to the owner may petition the Design Review Committee (DRC) for a variance from this set back only. The petitioning owner must identify the specific hardship created and the extent of the variance requested. The actions of the DRC shall be in accordance with standards and procedures set by it, and its decision shall be based on the larger objectives of sound site planning and design compatability of the subdivision as a whole if the variance were granted. The decision of the DRC shall be final and subject to no further appeal.

Section 16. Building Completion. Once construction or

modification plans have been approved by the DRC and groundbreaking has taken place, the project shall be diligently pursued to completion, and no dwelling shall be occupied until completed as per plans and specifications approved by the DRC.

ARTICLE VII

EASEMENTS

Section 1. Declarant hereby reserves for itself its successors or assigns, blanket easements upon, across, over, and under all of the properties for ingress, egress, installation, replacing, repairing, and maintaining master television antennae systems, security, and similar systems, walkways, and all utilities, including, but not limited to water, sewers, telephones, gas, and electricity, which easements may be assigned by Declarant by written instrument.

Such easements shall be used in a reasonable manner and at reasonable times in order to minimize the effect upon the use and enjoyment of privately owned property. These reserved easements may be assigned by Declarant by a written instrument. The exercise of these easements for the construction and installation of any given utility shall not bar the further exercise of these easements for the construction and installation of other utilities. Utility easements are similarly reserved within the rights of way of all public and private streets established by dedication or by recorded plats within the property. The execution of formal easements for such utility purposes, as and when such utility easements shall be deemed by Declarant to be appropriate, shall be entirely at the discretion of Declarant, and Declarant hereby retains the right to execute any such

easement agreements without the joint execution of the consent of the owner of any parcel or lot affected thereby. For such purposes, the use of all or any part of such easements and rights of way may be granted or assigned at any time hereafter by Declarant to any person, firm, governmental unit or agency or corporation furnishing any such services. Drainage flow shall not be obstructed nor be diverted from drainage swales, storm sewers, and/or utility easements as designated herein, or as may hereafter appear on any plat of record in which reference is made to these Covenants.

Section 2. Others. There is hereby reserved, without further assent or permit, a general easement to Declarant, its agents and employees, and to all policemen, firemen, ambulance personnel and all similar persons to enter upon the property or any portion thereof which is now or hereafter made subject to this Declaration and proper performance of their respective duties.

ARTICLE VIII

GENERAL PROVISIONS

Section 1. Term. These covenants shall run with the land and be binding on all parties owning a lot in said subdivision, as well as all parties claiming under them, subject to the exceptions stated herein, for a period of twenty (20) years. At the expiration of said term, these covenants shall automatically be extended for successive periods of ten (10) years unless terminated by an instrument in writing by a majority of the then owners of lots in said subdivision.

Section 2. Amendment. The Covenants and Restrictions of this Declaration may be amended at any time and from time to

time during the first twenty (20) year period, and at any time and from time to time during the period of any extension and renewal thereof, by an agreement signed (a) by Declarant, if it is the owner of any lots then subject thereto, and (b) by at least two-thirds (2/3) of the property owners whose lots are then subject thereto, and (c) by the then owner of the common properties subject to this Declaration. Any such amendment shall not become effective until the instrument evidencing such change has been filed for records in the Office of the Clerk of the Superior Court of Gwinnett County, Georgia. Every purchaser or grantee of any interest in any property now or hereafter made subject to this Declaration, by acceptance of a deed or other conveyance thereof, thereby agrees that the Covenants and Restrictions of this Declaration may be amended as provided in this section.

This Declaration may be amended unilaterally at any time and from time to time by Declarant (i) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the lots subject to this Declaration, (iii) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the lots subject to this Declaration, or (iv) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the lots subject to this

Declaration, provided any such amendment shall not adversely affect the title to any owner's lot or materially alter or change any lot owner's right to the use and enjoyment of the common property as set forth herein unless such lot owner shall consent thereto in writing.

Section 3. Enforcement. Enforcement of the Covenants and Restrictions contained herein and of any other provision hereof shall be by any appropriate proceeding at law or in equity brought by Declarant or by any lot owner against any person or persons violating or attempting to violate said Covenants, Restrictions or other provisions, either to restrain violations, to enforce personal liability, or to recover damages, or by any appropriate proceeding at law or in equity against the land to enforce any charge or lien arising by virtue thereof. Any failure by Declarant or any property owner to enforce any of said Covenants and Restrictions or other provision shall in no event be deemed a waiver of the right to do so thereafter.

In addition to all other rights for specific enforcement or for damages, violation of these covenants may subject the violator to a fine of fifty (\$50) dollars per day for each day during which such violation continues. Such fine may be assessed against the violator, in the discretion of Declarant, in the same manner and subject to the same rights of enforcement as the lien for assessments created by Article IV of this Declaration.

In any successful action seeking enforcement of these covenants, the party seeking enforcement of the covenants shall be entitled to reasonable attorney fees from the party violating the covenants.

Section 4. Delegation and Assignability. Declarant shall

at all times and from time to time have the right to delegate any and all functions herein reserved to Declarant. Further, notwithstanding any other provision contained herein to the contrary, Declarant shall have the right at all times and from time to time to fully transfer, convey and assign all or any part of its right, title and interest under this Declaration, provided, however, that any such transferee, grantee or assignee shall take such right subject to all obligations of Declarant also herein contained in respect thereto and such transferee, grantee or assignee shall be deemed to have assumed the same.

Section 5. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if any provision of this Declaration or the application thereof to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

Section 6. Captions. The captions of each section hereof as to the contents of each section are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular sections to which they refer.

Section 7. Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the use of the masculine pronouns shall include the neuter and feminine.

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ARTICLE IX

ASSOCIATION MEMBERSHIP

The Declarant and the owner of any lot that is subject to this Declaration shall be deemed to have a membership in the Association. Membership shall be appurtenant to and may not be separated from ownership of a lot.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 17th day of September, 1987.

LANIER DEVELOPMENT ASSOCIATES,
a Georgia general partnership

Signed, sealed and delivered
this 17th day of September
1987, in the presence of:

By: [Signature]

[Signature]
Notary Public (AFFIX SEAL)
My Commission Expires: 6-3-88

SLO:ljs

For reference see plat as recorded in plat book 42
page 198 Gwinnett County Records.