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AMENDED

**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS**

FOR

EAGLES LANDING ON LANIER

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP
HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS
DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY
OWNER'S ASSOCIATION ACT, O.C.G.A. SECTION 44-3-220 ET SEQ.

AMENDED

**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS**

FOR

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EXHIBIT "A"

Property Description

EXHIBIT "B"

Additional Property Which May Unilaterally
Be submitted To This Declaration by Declarant

EXHIBIT "C"

Bylaws of Eagles/Lanier Homeowners Association, Inc.

**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS
FOR
EAGLES LANDING ON LANIER**

THIS DECLARATION is made on the date hereinafter set forth by LANIER/FORSYTH LLC, a Georgia Limited Liability Company (hereinafter sometimes called "Declarant");

WITNESETH:

Whereas, Declarant is the owner of the real property described in Exhibit "A" of this Declaration or, if not the owner, Declarant has the written consent of the owner to subject such property to the provisions of this Declaration; and

WHEREAS, Declarant desires to subject the real property described in Exhibit "A" hereof to the provisions of this declaration to create a residential community of single-family housing and to provide for the subjection of other real property to the provisions of this Declaration;

NOW, THEREFORE, Declarant hereby declares that the real property described in Exhibit "A" hereof 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, hereinafter set forth, which are for protecting the value and desirability of and which shall run with the title to, the real property hereby and 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 now and hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title and assigns and shall inure to benefit of each owner of all or any portion thereof.

**Article 1
Definitions**

The following words, when used in this Declaration of in any Supplementary Declaration, shall have the following meanings:

1.1 "Articles of Incorporation" means the Articles of Incorporation of Eagles/Lanier Homeowners Association, Inc., filed with the Georgia Secretary of State and incorporated herein by this reference as may be amended from time to time.

1.2 "Association" means Eagles/Lanier Homeowners Association, Inc., a Georgia nonprofit corporation, its successors and assigns.

1.3 “Board of Directors” or “Board” means the appointed or elected body of the Association, vested with the authority to manage the affairs of the Association under the Georgia Nonprofit Corporation Code, O.C.G.A. Section 14-3-101 et seq.

1.4 “Bylaws” means the Bylaws of Eagles/Lanier Homeowners Association, Inc., attached to this Declaration as Exhibit “C” and incorporated herein by this reference as may be amended from time to time.

1.5 “Common Property” Means any and all real and personal property, including, without limitation, easements and other interest therein, and the facilities and improvements located therein, now or hereafter owned by the Association for the common use and enjoyment of the Owners.

1.6 “Community” refers to that certain real property described in Exhibit “A”, attached hereto, and such additions thereto as may be made by supplementary Declaration as provided herein.

1.7 “Community-Wide Standard” means the standard of conduct, maintenance or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association. Such determination, however, must be consistent with the Community-Wide Standard originally established by the Declarant.

1.8 “Declarant” means Lanier/Forsyth, a Georgia corporation and its successors-in-title and assigns, provided in a recorded instrument, such successor-in-title or assignee is designated as the “Declarant” hereunder by the prior “Declarant” hereunder; provided, further, upon the effective date of the designation of a successors Declarant, all rights of the former Declarant in and to such status as “Declarant” hereunder shall cease, it being understood that there shall be only one “Declarant” hereunder at any one point in time.

1.9 “Lot” Means any plot of land within the Community, whether or not improvements are constructed thereon which constitutes or will constitute, after the construction of improvements, a single-family dwelling site as shown in a plat recorded in the land records of the county where the Community is located. The ownership of each Lot shall include, and there shall pass with the title to each Lot as an appurtenance thereto, whether or not separately described, all of the rights and interest of an Owner in the Common Property, as herein provided, together with membership in the Association.

1.10 “Mortgage” means any and all instruments used for the purpose of encumbering real property in the Community as security for the payment or satisfaction of an obligation, including, without limitation, any mortgage, deed to secure debt or deed of trust.

1.11 “Mortgagee” means the holder of a Mortgage.

1.12 “Occupant” means any person occupying all or any portion of a Lot or other property located within the Community for any period of time, regardless of whether such Person is a tenant of the Owner of such property.

- 1.13 “Owner” means the record owner, whether one or more Persons, of the fee simple title to any Lot located within the Community, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation.
- 1.14 “Person” includes any individual, individual acting in a fiduciary capacity, corporation, limited partnership, limited liability company, general partnership, joint stock company, joint venture, association, company, trust or other organization, whether or not recognized as separate legal entity.
- 1.15 “Supplementary Declaration” means an amendment or supplement to this Declaration which subjects additional property to this Declaration and/or imposes additional covenants, conditions, restrictions or easements on the land described therein.
- 1.16 “Total Association Vote” means the votes attributable to the entire membership of the Association (including votes of Declarant) as of the record date for such actions, whether or not such members are present or represented at the meeting, if any, where such votes are to be cast. If, for example, and without limitation, a majority of the Total Association Vote is required to approve a matter, such matter must receive more than half of the votes attributable to all existing members of the Association as of the record date for such action, whether or not such members are present or represented at the meeting, if any, where such votes are to be cast. As a further illustration, if a majority vote is required to approve a matter (and the term Total Association Vote is not used), such matter must receive more than half of the votes cast by the members entitled to vote on the matter.

Article 2

Property Subject To This Declaration

- 2.1 Property Hereby Subjected To This Declaration. The real property which is, by the recording of this Declaration, subject to the covenants, conditions, restrictions and easements hereafter set forth and which by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied and encumbered subject to this Declaration is the real property described in Exhibit “A” attached hereto and by this reference made a part hereof.
- 2.2 Other Property. Only the real property described in Exhibit “A” is hereby made subject to this Declaration; provided, however, by one or more Supplementary Declarations, Declarant and the Association have the right, but not the obligation, subject other real property to this Declaration, as hereinafter provided.

Article 3

Association Membership and Voting Rights

- 3.1 Membership. Every Person who is the record owner of a fee or undivided fee interest in any Lot that is subject to this Declaration shall have a membership in the

Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, Shall have more than one membership per Lot. Membership shall be appurtenant to and may not be separated from the ownership of a Lot. The rights and privileges of membership including the right to vote and to hold office, may be exercised by a member or the member's spouse, but in no event shall more than one vote be cast nor office held (except for Declarant) for each Lot owned.

- 3.2 Voting. Members shall be entitled to one vote for each Lot owned. When more than one Person holds an ownership interest in a Lot, the vote for such Lot shall be exercised as those Owners themselves determine and advise the Secretary prior to any meeting. In the absence of such advice, the vote attributable to such Lot shall be suspended in the event more than one person seeks to exercise it.

Article 4 **Assessments**

- 4.1 Purpose of Assessments. The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of Lots, including, without limitation, the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.
- 4.2 Creation of the Lien and Personal Obligation for Assessments. Each Owner of a Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) general assessments; (b) special assessments; and (c) specific assessments. All such assessments, together with late charges, interest (at a rate set by the Board of Directors from time to time, but not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum on the principal amount due) and costs of collection, including, without limitation, reasonable attorney's fees actually incurred, shall, from the time the sums become due and payable, be a charge on the land and shall be a continuing lien in favor of the Association on the Lot against which each assessment is made. The recording of this Declaration shall constitute record notice of the existence of the lien and no further recordation of any claim of lien shall be required. Each such assessment, together with such late charges, interest and costs, shall also be the personal obligation of the Person who was the Owner of the Lot at the time the assessment fell due. Each Owner shall be personally liable for the portion of each assessment coming due while the Owner of a Lot, and each grantee of an Owner shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall Not apply to any first Mortgagee taking title through foreclosure proceedings or deed in lieu of foreclosure. No Owner may waive or otherwise exempt such Owner from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot. No diminution or abatement of any assessment shall be claimed or allowed by reason of any failure of the Association to take some action or perform some function required to be taken or

performed by the Association to take some action or perform some function required to be taken or performed by the Association, the obligation to pay assessments being a separate and independent covenant on the part of each Owner. All payments shall be applied first to costs, then to late charges, then to interest and then to delinquent assessments.

- 4.3 General Assessments. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year. The Board shall cause the budget and the assessments to be levied against each Lot for the following period to be delivered to each member at least thirty (30) days prior to the due date of any general assessment. The budget and the assessment shall become effective unless disapproved at a meeting by a majority of the Total Association Vote and the Declarant. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for any period, then and until such time as a budget shall have been determined, as provided herein, the budget in effect shall continue. General assessments shall be levied equally and all similarly situated Lots and shall be paid in such manner and on such dates as may be fixed by the Board of Directors, which may include, without limitation, acceleration, upon ten (10) days' written notice for delinquents. Unless otherwise provided by the Board, the assessment shall be paid in one annual installment. General assessments include any sums the Board determines necessary for the continued ownership, operation and maintenance of the Common Property, operating expenses of the Association, payment for any items of betterment and the establishment of reserve funds as the Board shall deem proper. General assessments may include, without limitation, sums for property taxes, insurance premiums, legal and accounting fees, management fees, charges for utilities, cleaning and janitor services, landscape maintenance, expenses and liabilities incurred as provided herein and in the Articles of Incorporation and Bylaws for indemnification of officers and directors and in connection with the enforcement of rights and duties of the Association against Owners and other.
- 4.4 Special Assessments. The association may levy a special assessment if approved by two-thirds (2/3) of the Total Association Vote and the Declarant. Special assessments shall be paid as determined by the Board. The Board may permit a special assessment to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.
- 4.5 Specific Assessments. The Board shall have the power to levy specific assessments, as in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. Fines levied pursuant to this Declaration and the costs of maintenance performed by the Association for which the Owner is responsible shall be specific assessments. The Board may also specifically assess Owners for the following

Association expenses:

- (a) Expenses of the Association which benefit less than all of the Lots may be specifically assessed equitably among all of the Lots which are benefitted according to the benefit received.
- (b) Expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be assessed equitable among all Lots according to the benefit received.

4.6 Subordination of Liens to Mortgages. The Lien of all assessments authorized herein is hereby made subordinate to the lien of any first Mortgage placed on a Lot if, but only if, all assessments and charges with respect to such Lot authorized herein having a due date on or prior to the due date of the Mortgage as filed of record have been paid. The lien hereby subordinated is only such lien as relates to assessments and charges authorized hereunder having a due date subsequent to the date such Mortgage is filed of record and prior to the satisfaction, cancellation or foreclosure of such Mortgage or the sale or transfer of the Lot pursuant to any proceeding in lieu of foreclosure or the sale or transfer of the Lot pursuant to a sale under power contained in such Mortgage. Such subordination is merely a subordination and shall not relieve the Owner of the Lot of his or her personal obligation to pay all assessments coming due at any time when he or she is the Owner of such Lot; shall not relieve such Lot from the lien provided for herein (except to the extent a subordinated lien is extinguished as a result of such subordination as against a Mortgagee or such Mortgagee's assignee or transferee by foreclosure or by sale under power); and no sale or transfer of such Lot to the Mortgagee or to any other Person pursuant to a decree of foreclosure, or pursuant to any other proceeding in lieu of foreclosure or pursuant to a sale under power, shall relieve any existing or previous Owner of such Lot of any Personal obligation or relieve such Lot or the then Owner of such Lot from liability for any assessment authorized hereunder became due after such sale and transfer.

4.7 Remedies of the Association. Any assessments or installments thereof which are not paid when due shall be delinquent. In addition to the lien rights, the personal obligation of the then Owner to pay such assessments shall remain such Owner's personal obligation and shall also pass to such Owner's successors-in-title. Such Owner shall nevertheless remain as fully obligated as before to pay to the Association any and all amounts which such Owner was obligated to pay immediately preceding the transfer; and such Owner and such successors-in-title shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such Owner and such successors-in-title creating any indemnification of the Owner or any relationship of principal and surety as between themselves. Any assessment or installment thereof delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may from time to time determine. The Association may cause a notice of delinquency to be given to any Owner who has not paid within ten(10) days from the due date. In the event that the assessment remains unpaid after sixty (60) days, the Association may institute suit to collect such amounts and/or to foreclose its lien. Each owner, by acceptance of a deed vests in the Association the right and power to bring all actions against such Owner personally, for the collection of such charges as a debt or to foreclose the lien. The lien provided for in this Declaration shall be in favor of

the Association and shall be for the benefit of all Owners. The Association shall have the power to bid on the Lot at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. The Association may also suspend the membership rights of the delinquent Owner, including the right to vote, the right of enjoyment in and to the Common Property and recreational facilities and the right to receive and enjoy such servicing and other benefits as may then be provided by the Association. Any such suspension shall not affect such member's obligation to pay assessments, due during the period of such suspension and shall not affect the permanent lien on such Lot in favor of the Association.

- 4.8 Date of Commencement of Assessments. Assessments shall commence when the Board of Directors first determines a budget and levies assessments. The assessments provided for herein shall commence as to a Lot when it has been improved with a dwelling and has been conveyed to an owner who intends to occupy the dwelling as a residence, or, if the dwelling is occupied as a residence before such conveyance, the date of such occupancy.
- 4.9 Budget Deficits During Declarant Control. For so long as the Declarant has the authority to appoint the directors and officers of the Association, Declarant may, but is not obligated to: (a) advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for capital reserves), and the sum of the annual, special and specific assessments collected by the Association in any fiscal year (such advances shall be evidenced by promissory notes from the Association in favor of the Declarant); or (b) cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for similar loans in the local area of the Community. No Mortgage secured by the Common Property or any of the improvements maintained by the Association shall be given in connection with such loan.
- 4.10 Estoppel Letter. The Association shall, within five (5) days after receiving a written request therefore and for a reasonable charge, as established by the Board, certify to the amount of any unpaid assessments constituting a lien on a specific Lot. A certification letter signed by an officer of the Association or the Association's managing agent, if any, as to the amount of assessments due with respect to a Lot shall be binding upon the Association.
- 4.11 Initiation Fee. In addition to the other assessments described hereinabove, at the time any Lot is sold, transferred, or conveyed after the date of the recording of this Amendment, the purchaser or grantee of such Lot shall pay to the Association a one-time, non-refundable initiation fee equal to the full annual assessment for the year in which the sale, transfer, or conveyance occurs. Such funds shall be collected at the closing of such Lot and shall be used for the purpose of providing working capital to the Association and for such other purposes as may be determined by the Board. Any initiation fees that are not paid when due shall be delinquent and shall be subject to and collected pursuant to the provisions of Article 4, Section 4.2.

Article 5
Maintenance: Conveyance of Common Property to Association

- 5.1 Association's Responsibility. The association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, the maintenance, repair and replacement of all landscaping and improvements situated on the Common Property. The Association shall also maintain (whether or not constituting Common Property): (a) all Community entry features; (b) Community landscaping originally installed by the Declarant, whether or not such landscaping is on a Lot, privately owned property or public right-of-way; (c) all storm water detention/retention ponds and storm water drainage facilities serving the Community. If and to the extent such facilities are not maintained by a public body of the owners of the neighboring property benefited by such facilities; (d) all property outside of Lots which was originally maintained by Declarant; and (e) all recreational facilities, if any. In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether within or without the Community and to enter into easements and covenant to share costs agreements regarding such property where the Board has determined that such action would benefit the Owners. In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association herein, is caused through the willful or negligent act of an Owner, or the Occupants, family, guests, lessees, or invitees of an Owner, then the Association may perform such maintenance, repair or replacement and all costs thereof, not paid for by insurance, shall be assessed against the Owner as a specific assessment. All maintenance by the Association shall be performed consistent with the Community-Wide Standard.
- 5.2 Owner's Responsibility. Except for maintenance performed on a Lot by the Association pursuant to Section 5.1, if any, all maintenance of the Lot and all structures, landscaping, and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with the Community-Wide Standard and this Declaration. In the event that the Board of Directors determines that any Owner has failed or refused to discharge properly and of such Owner's obligations with regard to the Association shall, except in an emergency situation, give the Owner written notice of the sole cost and expense. The notice shall set forth with reasonable particularity, the maintenance, repair or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair or replacement, or, in the event that such maintenance, repair, or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair or replacement and all costs thereof shall be assessed against the Owner and the Lot as a specific assessment.
- 5.3 Conveyance of Common Property by Declarant to Association: No Implied Rights. The Declarant may transfer or convey to the Association at any time and from time to time any personal property and any interest in improved or unimproved real property. Such conveyance shall be deemed to be accepted by the Association

upon delivery of any personal property or upon recordation of an instrument of conveyance of any interest in real property, and the property shall thereafter be Common Property to be used and maintained by the Association for the benefit of its members. The Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section and shall have no duty or obligation to convey any property or property rights to the Association regardless of whether or not any such property has been made available for the use of Owners. The Declarant may reserve, by lease, license, easement or otherwise such rights of use and enjoyment in and to all or any portion of the property so conveyed as Declarant may reasonably require so long as such reservation is not materially inconsistent with the overall scheme of development for the Community. Neither the recordation of any subdivision plat nor the use by the Owners or maintenance by the Association or the Owners, express or implied, unless and until any such property rights, easements or licenses are conveyed by the Declarant or the owner of such property to the Association or the Owners, as the case may be, by an instrument recorded in the real estate records of the County where the property is located.

Article 6 **Architectural Standards and Use Restrictions**

- 6.1 Rules and Regulations. The Board of Directors may, from time to time, without a vote of the members, promulgate, modify or delete rules and regulations applicable to the Community. Such rules and regulations shall be distributed to all Owners Prior to the date that there to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled or modified by a majority of the Total Association Vote and the consent of Declarant.
- 6.2 Residential Use. Each Lot shall be used for single family residential purposes exclusively. Leasing of a lot for residential occupancy shall not be considered a business of business activity. No trade or business of any kind may be conducted in or from a Lot, except that the Owner or Occupant residing in the residence on a Lot may conduct business activities within the residence so long as the business activity: (a) does not otherwise violate the provisions of the Declaration or Bylaws; (b) is not apparent or detectable by sight, sound or smell from the exterior of the Lot; (c) does not unduly increase traffic flow or parking congestion; (d) conforms to all zoning requirements for the Community; (e) does not increase the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage; (f) is consistent with the residential character of the Community; (g) does not constitute a nuisance or a hazardous or offensive use; and (h) does not threaten the security or safety of other residents of the Community, all as may be determined in each case in the sole discretion of the Board of Directors. The Board may issue rules regarding permitted business activities. The terms “business” and “trade”, as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider’s family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) the activity is engaged in full or

part-time; (ii) the activity is intended to or does generate a profit; or (iii) a license is required for the activity.

- 6.3 Architectural Standards. No exterior construction, alteration, addition, or erection of any improvements of any nature whatsoever, including, without limitation, a change in the color of any improvement, shall be commenced or placed upon any part of the Community, except such as is installed by the Declarant, or as is approved in accordance with this Section, or as is otherwise expressly permitted herein. No exterior construction, addition, erection, or alteration shall be made unless and until plans and specifications showing at least the nature, kind, shape, height, materials and location shall have been submitted in writing to and approved by an Architectural Review Board established by Declarant. The Declarant may employ for the Architectural Review Board architects, engineers, or other Persons as it deems necessary to enable the Architectural Review Board to perform its review. The Architectural Review Board may, from time to time, delegate any of its rights or responsibilities hereunder to one or more duly licensed architects or other qualified Persons, which shall have full authority to act on behalf of the Architectural Review Board for all matters delegated. The architectural Review Board shall adopt design and development guidelines and application and review procedures which shall be set forth in the architectural guidelines. Copies of the architectural guidelines shall be available from the Architectural Review Board for review. The architectural Review Board shall have sole and full authority to prepare and to amend the architectural guidelines. The Architectural Review Board shall make the architectural guidelines available to Owners, builders and developers who seek to engage in development of or construction upon all or any portion of the Community and such Owners, builders and developers shall conduct their operations strictly in accordance therewith.

The Declarant shall have the right to appoint all members of the Architectural Review Board. There shall be no surrender of this right except in a written instrument in recordable form executed by Declarant and recorded in the land records of the Clerk of the Superior Court of the county where the Community is located. Upon the surrender in writing of such right, the Board of Directors shall appoint the members of the Architectural Review Board, which shall then and thereafter be a committee of the Association.

If the Architectural Review Board fails to approve or to disapprove submitted plans and specifications within ninety (90) business days after the plans and specifications have been submitted to it, such approval shall be deemed to have been given, but as to any such approval the Owner and the Owner's heirs, successors and assigns shall be bound by and shall comply with all other provisions of this Declaration. As a condition of approval under this Section, each Owner, on behalf of such Owner and such Owner's successor-in-interest, shall assume all responsibilities for maintenance, repair, replacement, and insurance to and on any change, modification, addition, or alteration. In the discretion of the Architectural Review Board, an Owner may be made to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of such Owner and such Owner's successors-in-interest. The Architectural Review Board shall be the sole arbiter of such plans and may withhold approval for

any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. Any member of the Architectural Review Board or its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property in the Community to inspect for the purpose of ascertaining whether or not these restrictive covenants have been or are being complied with. Such person or persons shall not be deemed guilty of trespass by reason of such entry. In addition to any other remedies available to the Architectural Review Board, in the event of noncompliance with this Section, the Architectural Review Board may record in the appropriate land records a notice of violation hereunder naming the violating Owner.

Plans and specifications are not approved for engineering or structural design or quality of materials, and by approving such plans and specifications neither the Architectural Review Board, the member(a) thereof, the Association, nor the Declarant assumes liability or responsibility therefore, nor for any defect in any structure constructed from such plans and specifications. Neither Declarant, the Association, the Architectural Review Board, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable for damages to anyone submitting plans and specifications for approval, or to any owner of property affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every Person who submits plans or specifications and every Owner agrees that such Person or Owner will not bring any action or suit against Declarant, the Association, the Architectural Review Board, the Board, or the officers, directors, members, employees, and agents of any of them to recover any such damages and hereby releases, remises, quitclaims and covenants not to sue for all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

The approval of the Architectural Review Board of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring approval or consent of the Architectural Review Board, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, or drawings, or matters whatever subsequently or additionally submitted for approval or consent.

Notwithstanding anything to the contrary contained herein, the Architectural Review Board shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws, the architectural guidelines and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case is dictated by unique circumstances, such as, but not limited to, topography, natural obstructions or hardship, or required by aesthetic or environmental considerations and would not be inconsistent with the overall scheme of development for the Community. No variance shall (a) be effective unless in writing, (b) be inconsistent

with the overall scheme of development for the Community, or (c) stop the Architectural Review Board from denying a variance in other similar circumstances. For purposes of this provision, the inability to obtain approval of any governmental agency or the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

- 6.4 Signs. No sign of any kind shall be erected by an Owner or Occupant within the Community without the prior written consent of the Declarant or the Architectural Review Board. Notwithstanding the foregoing, the Board and the Declarant shall have the right to erect reasonable and appropriate signs. "For Sale" signs and security signs consistent with the Community-Wide Standard and any signs required by legal proceedings may be erected upon any Lot. The provisions of this Section shall not apply to any Mortgage in possession due to foreclosure of a first Mortgage or as grantee pursuant to any deed in lieu of such foreclosure.
- 6.5 Vehicles: Parking. Vehicles shall be parked only in appropriate parking spaces serving the Lot or other designated areas, if any. No on-street parking, other than in connection with special events as approved by the Board of Directors, shall be permitted within the Community. All parking shall be subject to such rules and regulations as the Board may adopt. The term "vehicles", as used herein, shall include without limitation, motor homes, boats, trailers, motorcycles, mini-bikes, scooters, go-carts, golf carts, trucks, campers, buses, vans and automobiles. The term "parking areas" shall refer to the number of garage parking spaces and the spaces located in the driveway of each Lot. All homes shall contain a garage; carports shall not be permitted. Garage doors should be kept closed at all times, except during times of ingress and egress from the garage. No vehicle may be left upon any portion of the Community, except in a garage or other area designated by the Board, for a period longer than five (5) days if it is unlicensed or if it is in a condition such that it is incapable of being operated upon the public highways. After such five-day period, such vehicle shall be considered a nuisance and may be removed from the Community by the Board of Directors. Any towed vehicle, boat, recreational vehicle, motor home, trailer, motorcycle, mini-bike, scooter, go-cart, golf cart, commercial truck, camper, bus, or mobile home regularly stored in the Community or temporarily kept in the Community, except if kept in a garage or other area designated by the Board, for periods longer than 24 hours each shall be considered a nuisance and may be removed from the Community by the Board of Directors. Trucks with mounted campers which are used as a primary means of transportation shall not be considered recreational vehicles provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal.
- 6.6 Leasing. Lots may be leased for residential purposes. Unless otherwise provided by the Board of Directors, all leases shall have a minimum term of at least six (6) months. All leases shall require, without limitation, that the Occupants acknowledge receipt of a copy of the Declaration, Bylaws, use restrictions and rules and regulations of the Association. The lease shall also obligate the Occupants to comply with the foregoing.
- 6.7 Animals and Pets. No animals, livestock or poultry of any kind may be raised, bred, kept or permitted on any Lot, with the exception of dogs, cats or other usual

and common household pets in reasonable number as determined by the Board. No pets shall be kept, bred or maintained for any commercial purpose. No exterior pens for household pets shall be erected or maintained on any Lot without the prior written consent of the Architectural Review Board.

- 6.8 Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly or unkempt condition on a Lot. No property within the Community shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, comfort or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance or nuisance to any person using any property within the Community. No plants, animals, device or thing of any sort shall be maintained in the Community whose activities or existence is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the community by other Owners and Occupants. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Lot.
- 6.9 Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkempt conditions, shall not be pursued or undertaken in any part of the Community.
- 6.10 Antennas. No exterior antennas, receiving dishes or similar apparatus of any kind for receiving or transmitting of radio or television signals shall be placed, allowed or maintained upon any portion of the Community, including any Lot, without the prior written consent of the Architectural Review Board; provided, however, the Architecture Review Committee shall approve one television satellite receiving dish not larger than 24 inches in diameter which blends with the roof color and is installed on the roof of the main dwelling so as not to be visible from the street in front of the Lot.
- 6.11 Tree Removal. No trees that are more than four inches in diameter at a point 12 inches above the ground shall be removed without the prior written consent of the Architectural Review Board. However, no ornamental or flowering trees, including, but not limited to, dogwood trees, cottonwood trees, cherry trees or apple trees, regardless of diameter, shall be removed without the prior written consent of the Architectural Review Board. Owners shall also comply with any local ordinance applicable to tree removal. In the event of a conflict between the provisions of this Section and any local ordinance, the more restrictive provision shall govern. This provision shall not apply to the Declarant.

- 6.12 Drainage. Catch basins, retention ponds and drainage easement areas are for the purpose of controlling the natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner may obstruct or alter the drainage flows after location and installation of catch basins, retention ponds, detention ponds, drainage swales, storm sewers or storm drains without the prior written consent of the Architectural Review Board.
- 6.13 Sight Distance at intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, shrub or other planting or thing shall be placed or permitted to remain where, in the opinion of the Board, it would create an unsafe condition.
- 6.14 Garbage Cans, Woodpiles, Etc. All garbage cans, woodpiles, swimming pools, pumps, filters and related equipment, and other similar items shall be located or screened so as to be concealed from view from neighboring streets and property. All rubbish, trash and garbage shall be regularly removed and shall not be allowed to accumulate. Trash, garbage, debris or other waste matter of any kind may not be burned within the Community.
- 6.15 Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Architectural Review Board. Declarant, however, hereby expressly reserves the right to subdivide and/or revise and re-record the subdivision plat of any Lot(s) with the consent of the Owner of the effected Lot(s) and to approve the revision and re-recording of any plat of any Lot(s) owned by any builder or developer, including, but not limited to, changing any Lot to Common Property or creating a public or private street over any Lot or property that was formerly a Lot, without the consent of any Person, other than the Owner(s) of such Lot(s).
- 6.16 Guns. The use of firearms in the Community is prohibited. The term "firearms" includes, without limitation, "B-B" guns, pellet guns and firearms of all types.
- 6.17 Fences. No fencing type barrier of any kind shall be placed, erected, allowed or maintained upon any Lot without the Prior Written consent of the Architectural Review Board. Any fence placed, erected allowed or maintained upon any Lot closer to the street than the front of the residence located on the Lot must be approved by the Architectural Review Board. The Architectural Review Board may issue guidelines detailing acceptable fence styles or specifications. The Declarant and the Association may erect any type of fence on the Common Property or elsewhere within the Community as may be deemed appropriate by the Board of Directors or as necessary to satisfy the requirements of any law, regulation or government entity or for health and safety of residents.
- 6.18 Utility Lines. Except as may be permitted by the Declarant or the Architectural Review Board, no overhead utility lines, including lines for cable television, shall be permitted within the Community.
- 6.19 Air-Conditioning Units. No window air conditioning units may be installed.

- 6.20 Lighting. Exterior lighting on any Lot visible from the street shall not be permitted except for: (a) approved lighting as originally installed on a Lot; (b) one decorative post light; (c) street lights in conformity with an established street lighting program for the Community; (d) seasonal decorative lights; (e) front house illumination of model homes; or (f) other lighting approved by the Architectural Review Board.
- 6.21 Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any property. Exterior sculpture, mountains, flags and similar items must be approved by the Architectural Review Board.
- 6.22 Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless as an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Architectural Review Board.
- 6.23 Swimming Pools. No swimming pool shall be constructed, erected or maintained upon any Lot without the prior written consent of the Architectural Review Board and in no event shall any above-ground swimming pool be permitted.
- 6.24 Gardens, Play Equipment and Pools. No vegetable garden, hammock, statuary, play equipment (including, without limitation, basketball goals) or pool to be erected on any Lot may be located other than between the rear dwelling line and the rear lot line, without the prior written consent of the Architectural Review Board.
- 6.25 Mailboxes. All mailboxes serving Lots shall be approved by the Architectural Review Board. Identical replacement mailboxes may be installed without further approval; but no modification to or change in the mailboxes may be made without the approval in writing of the Architectural Review Board.
- 6.26 Clotheslines. No exterior clotheslines of any type shall be permitted upon any Lot.
- 6.27 Entry Features. Owners shall not alter, remove or add improvements to any entry features constructed by the Declarant on any Lots, or any part of any easement area associated therewith without the prior written consent of the Architectural Review Board.
- 6.28 Zoning Requirements. The following must be complied with:
- (a) Houses on lots on the west side of the development adjoining the Corps. Of Engineers' property shall have a minimum of 1,600 square feet of heated space.
 - (b) Houses on lots on the east side of Waldrip Road shall have a minimum of 1,850 square feet of heated space.
 - (c) All homes must have a two-car enclosed garage not included in the minimum heated floor space.
 - (d) On the west side of the property, there shall be a minimum of one acre of amenities buildable property left for development of amenities package for the homeowners in this development.
 - (e) An undisturbed buffer of twenty-five feet will be required along the right of way of Turtle Back Drive from Waldrip Road to the end of the property.

- (f) No residential driveway shall have direct access to Waldrip Road or Turtle Back Drive.
- (g) No trees over six (6) inches in diameter shall be removed unless dead or necessary for house construction, utilities or roads. On any lot abutting Waldrip Road, no outbuilding, swing sets, dog kennels, or other improvements or structures of any kind shall be placed in the rear yard of the residences without the prior written consent of the Architectural Review Board. No trees shall be removed from the rear yards of these lots without the consent of the Architectural Review Board.

Article 7
Insurance and Casualty Losses

- 7.1 Insurance on Common Property. The Association shall obtain insurance coverage, if and to the extent necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the U.S. Department of Veterans Affairs, the U.S. Department of Housing and Urban Development, as applicable to the Community. Accordingly, the Board of Directors shall obtain casualty insurance for all insurable improvements, whether or not located on the Common Property, which the Association is obligated to maintain. This insurance shall provide, at a minimum, fire and extended coverage 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. The Board of Directors 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, 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. Policies may contain a reasonable deductible as determined by the Board of Directors. All such insurance coverage shall be written in the name of the Association and shall be governed by the provisions hereinafter set forth:
- (a) All policies shall be written with a company authorized and licensed to do business in Georgia.
 - (b) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participation in the settlement negotiations, if any, related thereto.
 - (c) In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.
 - (d) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement of these are reasonable available.

- (e) The Board of Directors shall make every reasonable effort to secure insurance policies that will provide for the following:
- (i) a waiver of subrogation by the insurer as to any claims against the Board of Directors, the manager of the Association, if any, the Owners and their respective tenants, servants, agents, and guests;
 - (ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;
 - (iii) that no policy may be canceled, not renewed, invalidated, or suspended on account of the acts or omissions of any one or more individual Owners;
 - (iv) that no policy may be canceled, not renewed, invalidated, or suspended on account of any defect or the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to change the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the association, its manager, any Owner or Mortgagee, as applicable;
 - (v) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and
 - (vi) that no policy may be canceled, not renewed or substantially modified without at least thirty (30) days' prior written notice to the Association.

In addition to the other insurance required by this Section, the Board of Directors shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on directors, officers, employees and other persons handling or responsible for the Association's funds, if reasonable available. If obtained, the amount of fidelity coverage shall be determined in the directors' best business judgment, and, if available, shall at least equal three (3) months' total assessments plus reserves on hand. Fidelity coverage shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled, not renewed or substantially modified without at least thirty (30) days' prior written notice to the Association.

- 7.2 Individual Insurance. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner acknowledges that the Association has no obligations to provide any insurance for any portion of individual Lots and each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry all-risk casualty insurance on the Lot and all structures constructed thereon and liability policy covering damage or injury occurring on Lot. The casualty insurance shall cover loss of damage by fire and other hazards commonly insured under an "all-risk" policy, if reasonable available 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. The policies required hereunder shall be in effect at all times.

- 7.3 Damage and Destruction – Insured by Association. Immediately after damage or destruction by fire or other casualty to any portion of any improvement covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in the applicable building codes. Any damage or destruction to property covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within 60 days after the casualty, a proposal not to repair or reconstruct such property is approved by at least 75% of the Total Association Vote and the Declarant. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed 60 days. If the Damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the members of the Association, levy a special assessment against the Owner of each Lot. Additional assessments may be made in like manner, as necessary, at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association. In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, the property shall thereafter be maintained by the Association in a neat and attractive condition.
- 7.4 Damage and Destruction – Insured by Owners. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner thereof within 75 days after such damage or destruction or, where repairs cannot be completed within 75 days; they shall be commenced within such period and shall be completed within a reasonable time thereafter. Alternatively, the Owner may elect to demolish all improvements on the Lot and remove all debris therefrom within 75 days after such damage or destruction.

Article 8 **Condemnation**

In the event of taking by eminent domain of any portion of the Common Property on which improvements have been constructed, the Association shall restore or

replace such improvements have been constructed, the Association shall restore or replace such improvements so taken on the remaining Common Property, unless within 60 days after such taking, an alternative plan is approved by at least 75% of the Total Association Vote and the consent of Declarant. The provisions hereof applicable to Common Property improvements damage, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

Article 9

Annexation of Additional Property

- 9.1 Unilateral Annexation by Declarant. As the owner thereof or, if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option from time to time at any time until ten (10) years after the recording of this Declaration to subject all or any portion of the real property described in Exhibit "B" attached hereto and by reference made part hereof, to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the county in which the property to be annexed is located a Supplementary Declaration describing the property being subjected. Any annexation shall be effective upon the filing for record of a Supplementary Declaration unless a later effective date to this Declaration are not changed and as long as rights of existing Owners are not adversely affected, the Declarant may unilaterally amend this Declaration to reflect the different character of any such annexed real property. If any land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.
- 9.2 Other Annexation. Upon written consent of: (a) the owner(s) thereof; (b) the Declarant; and (c) the Owners of at least two-thirds of the lots, the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association by filing for the record in the county in which the property to be annexed is located a Supplementary Declaration describing the property being annexed. Any such Supplementary Declaration shall be by the owner of the property being annexed and the President of the Association whose signature shall be attested by the Secretary of the Association and any such annexation shall be effective only upon the filing for record of such Supplementary Declaration, unless a later effective date is provided therein.

Article 10

Mortgage Provisions

- 10.1 Notices of Action. An institutional holder, insurer or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer or guarantor and the Lot number, therefore becoming an "eligible holder", will be entitled to timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Lot in which there is a first Mortgage held, insured, or guaranteed by such eligible holder;
 - (b) Any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request is entitled to written notice from the Association of any default in the performance by the Owner of the encumbered Lot of any obligation under the Declaration of Bylaws of the Association which is not cured within sixty (60) days; and
 - (c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association.
- 10.2 No Priority. No provisions of this Declaration or the Bylaws gives any Owner or other party priority over any rights of a Mortgagee of any Lot in the case of distribution to such Owner of insurance Proceeds or condemnation awards for losses to or a taking of the Common Property.
- 10.3 Notice to Association. Upon request, each Lot Owner shall be obligated to furnish the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.
- 10.4 VA/HUD Approval. As long as the Declarant has the right to appoint and remove the directors of the Association and so long as the project is approved by the U. S. Department of Housing and Urban Development ("HUD") for insuring or the U. S. Department of Veterans Affairs ("VA") for guaranteeing any Mortgage in the Community the following actions shall require the prior approval for the VA and /or HUD as applicable: annexation of additional property to the Community, except for the annexation be Declarant, as provided herein; dedication of Common Property to any public entity; merger, consolidation or dissolution of the Association; and material amendment of the Declaration, Bylaws or Articles of Incorporation.

Article 11 **Easements**

- 11.1 Easements for Use and Enjoyment. Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to each Lot, subject to the following provisions:
- (i) the right of the Association to charge reasonable admission and other fees for the use of any portion of the Common Property, to limit the number of Persons who may use the Common Property, and to provide for the exclusive use and enjoyment of special portions thereof at certain designated times by authorized users and their guests and invitees;

- (ii) the right of the Association to suspend the voting rights of a Lot Owner and the right of an Owner to use the Community recreation facilities, if any, for a period during which any past due assessment against any Lot of the Owner remains unpaid; and for a reasonable period of time for an infraction of the Declaration, Bylaws or rules and regulations.
- (iii) the right of the Association to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, repairing or improving any facilities located thereon and , upon the affirmative vote of the Owners of at least two-thirds of the Lots (other than Declarant) and the consent of Declarant, to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property;
- (iv) the right of the Association to dedicate or grant licenses, permits, easements or rights-of-way over, under and through the Common Property to government entities, any quasigovernmental agency or to any utility company or cable television company;
- (v) the right of the Association to dedicate or transfer all or any portion of the Common Property upon the approval of the Owners of at least two-thirds of the Lots (other than Declarant) and the Declarant;
- (vi) all other rights of the Association, the Declarant, Owners and Occupants set forth in this Declaration or in any deed conveying common property to the Association;
- (vii) all encumbrances and other matters shown by the applicable public records affecting the Common Property.

(b) Any Owner shall be deemed to have made a delegation of such Owner's right of use and enjoyment and to the Common Property and facilities located thereon to the Occupants of such Owner's Lot and the Owner and Occupants may further delegate such rights to their guests when accompanied by an Owner or Occupant.

11.2 Easements for Utilities. Declarant hereby reserves for the benefit of Declarant and grants to the Association, a nonexclusive, transferable, and perpetual easement upon, across, above and under all property within the Community for access, ingress, egress, installation, alteration, repairing, replacing, and maintaining all utilities serving the Community or any portion thereof, including, but not limited to gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system, or security system which the Declarant or the Association might decide to have installed to serve the Community, including, without limitation, such easements as may be shown on the recorded subdivision plats for the Community, Declarant and the

Association may alter drainage and water flow, install, repair, replace and maintain or authorize the installation, repairing, replacing and maintaining of such wire, conduits, cables and other equipment related to the providing of any utility or service. Should any Person furnishing any such utility or service request a specific license or easement by separate recordable document, the Declarant, or the Board of Directors, with the written consent of the Declarant, shall have the right to grant such easements without a vote of the Owners.

- 11.3 Easement for Emergency Entry. The Association shall have the right, but not the obligation, to enter upon any Lot for emergency, security and safety reasons and to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, Bylaws, and rules, which right may be exercised by any member of the Board, the officers, agents, employees and managers of the Association and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Lot to cure any condition which may increase the possibility of a fire, slope erosion or other hazard in an emergency situation an in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Association, but shall not authorize entry into any single family detached dwelling without permission of the Owners.
- 11.4 Easement of Maintenance. Declarant hereby grants to the Association a perpetual easement across the exterior portions of all Lots as may be reasonable necessary for the performance of the maintenance obligations of the Association required herein. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment to Lots, reasonable steps shall be taken to protect such property and damage shall be repaired by the Association or its contractors at their sole expense.
- 11.5 Easement for Entry Features and Streetscapes. There is hereby reserved to the Declarant and granted to the Association an easement for ingress, egress, installation, construction, landscaping and maintenance of entry features and similar streetscapes for the Community, over and upon any portion of a Lot containing such entry features or streetscapes as may be more fully described on the recorded subdivision plats for the community. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around entry features and streetscapes and the right to grade the land under and around the same.
- 11.6 Easement for Drainage. There is hereby reserved to the Declarant and granted to the Association an easement for creating and maintaining satisfactory drainage across Lots in the Community, over and across an area five feet wide along each side Lot line and ten feet wide along each rear Lot line; provided, however, such easement area shall not include any portion of a Lot upon which the foundation if a dwelling is located.

11.7 Easement During Construction and Sale Period. Notwithstanding any provisions now or hereafter contained in this Declaration, the Bylaws, Articles of Corporation, use restrictions, rules and regulations, architectural guidelines, and amendments thereto, Declarant reserves an easement across the Community for Declarant and any builder approved by Declarant to maintain and carry on, upon such portion of the Community as Declarant may reasonable deem necessary, such facilities and activities as in the sole opinion of Declarant may be required or convenient for Declarant's and such builder's development, construction and sales activities related to property hereby and hereafter subjected to this Declaration or nearby property being developed by Declarant or such builders, including, but not limited to: the right of access, ingress and egress for vehicular and pedestrian traffic an construction activities over, under, on or in the Community, including, without limitation, any Lot; the right to tie into any portion of the Community with streets, driveways, paths, parking areas and walkways; the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, cable television, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to grant easements over, under, in or on the Community, including without limitation the Lots, for the benefit of neighboring properties for the purpose of tying into and/or otherwise connecting and using sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to convert Lots (with the consent of the Owner thereof) to Common Property and/or streets, rights to construct recreational facilities, utilities and other improvements on Common Property; the right to carry on sales and promotional activities in the Community; and the right to construct and operate business offices, signs, construction trailers, model residences and sales offices. Declarant and any such builder may use residences, offices or other buildings owned or leased by Declarant or such builder as model residences and sales offices and may also use Community recreational facilities as a sales office without charge. This section shall not be amended without the Declarant's written consent until the Declarant's rights hereunder have terminated as hereinabove provided.

Article 12 **General Provisions**

12.1 Enforcement. Each Owner and Occupant shall comply strictly with the Bylaws, rules and regulations and use restrictions, as amended or modified from time to time, and with the covenants, conditions, easements and restrictions set forth in this Declaration, the recorded subdivision plats for the Community and the deed to such Owner's Lot, if any. The Board of Directors may impose fines or other sanctions for violations of the foregoing, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the Bylaws or the rules and regulations shall be grounds for an action to recover sums sue for damages or injunctive relief or both, maintainable by the Association, the Declarant or an aggrieved Owner. All

costs and expenses, including, without limitation, reasonable attorney's fees and court costs incurred by the Declarant, the Association or the Owner of any Lot in connection with the enforcement of a violation of the within and foregoing covenants, conditions, restrictions and easements shall be paid by the Owner found to be violating same other than Declarant and shall constitute a lien against the Lot of such violating Owner. Failure by the Declarant, the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Association shall have the right to record in the appropriate land records a notice of violation of the Declaration, Bylaws, rules and regulations, use restrictions or design guidelines and to assess the cost of recording and removing such notice against the Lot of the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing. The Declarant shall not be liable to any Person for any violations of the provisions of this Declaration, the Articles of Incorporation, Bylaws, rules and regulations and use restrictions and Declarant does not warrant to anyone that such provisions will be enforced as to any property to which this Declaration is applicable. The initiation of enforcement action from time to time by the will be for its sole benefit and Declarant specifically disavows any obligation, implied or otherwise, to maintain or enforce such provisions.

- 12.2 Occupants Bound. All provisions of this Declaration, Bylaws, rules and regulations, use restrictions and design guidelines which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants and the guests and invitees of Owners and Occupants. The Owner shall be responsible for insuring that the Occupants, the guests, invitees and licensees of Owner and Occupant strictly comply with all provisions of the Declaration, Bylaws, rules and regulations, use restrictions and design guidelines. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not timely paid, the fine may then be levied against the Owner.
- 12.3 Self-Help. In addition to any other remedies provided for herein, the Association, the Declarant, the Architectural Review Board or their respective duly authorized agents shall have the power to enter upon any Lot or any other portion of the Community to abate or remove any structure, thing or condition which violates this Declaration, the Bylaws, the rules and regulations or the use restrictions. Unless an emergency situation exists, the violating Lot Owner shall be given then days' written notice of the intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after giving any notice required by law. All costs of self-help, including, without limitation, reasonable attorney's fees actually incurred, shall be assessed against the violating Owner as a specific assessment.
- 12.4 Duration. The covenants, conditions, restrictions and easements contained in this Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by the Association, the Declarant and any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extend provided by law; provided, however, if an to the

extent that, Georgia law limits the period during which covenants restricting land to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, after which time, any such provision(s) shall be (a) automatically extended for successive periods of twenty (20) years (or the maximum period allowed by applicable law, if less), unless a written instrument signed by the then Owners of at least two-thirds (2/3) of the Lots has been recorded within the year immediately preceding the beginning of a twenty (20) year renewal period Agreeing to change such provisions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated to the extent specified therein; or (b) extended, renewed, modified or terminated as otherwise provided herein or by applicable law.

- 12.5 Termination of Rights of Declarant. The Declarant is the owner of other properties in the area in which the Community is located and, as such, has, and will continue to have, a direct and beneficial interest in the enforcement of the covenants, conditions, restrictions and easements set forth herein and established hereby and may enforce compliance with such covenants, conditions, restrictions and easements notwithstanding that the Declarant may no longer have an ownership interest in the Community or the right to annex additional property to this Declaration. Accordingly, the rights of Declarant to take, approve or consent to actions hereunder and under the Articles of Incorporation and Bylaws shall continue until the earlier of: (a) the date that the Declarant no longer owns any property for development and/or sale which is subject to this Declaration or which may be annexed to this Declaration by Declarant; or (b) the date of recording by Declarant in the real estate records of the county where the Community is located of a written instrument terminating any of such rights in whole or in part. The rights of Declarant shall be independent and severable and shall not terminate by implication.
- 12.6 Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) 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; (b) 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; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, without limitation, the Federal National Mortgage Association or the 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 (d) if such amendment is necessary to enable any governmental agency or private insurance company, including, without limitation, the U.S. Department of Housing and Urban Development and the U.S. Department of Veterans Affairs, to insure of guarantee Mortgage loans on the Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the statute to any Lot unless the Owner of such Lot consents thereto in writing. Further, Declarant may statute amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the

substantive rights of any Lots Owners hereunder nor shall it adversely affect title to any Lot without the consent of the affected Lot Owner. In addition to the above, this Declaration may be amended upon the affirmative vote or written consent of at least two-thirds of the Lot Owners and the consent of Declarant. Amendments to this Declaration shall become effective upon recordation unless a later effective date is specified therein. The consent of the Declarant to any amendment shall be evidenced by the execution of said amendment by Declarant. The consent of the requisite number of Owners to any amendment shall be evidenced by the execution of the amendment by said Owners, or, in the alternative, the sworn statement of the President or any Vice President or the Secretary of the Association attached to or incorporated in the amendment, which sworn statement states unequivocally that the consent of the required number of Owners was obtained and that any notices required by this Declaration, the Bylaws, the Articles of Incorporation and Georgia law were given.

- 12.7 Partition. The Common Property shall remain statute and no Owner shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Community and without the written consent of all holders of all Mortgages encumbering any portion of the property, including, without limitation, statute Lots located within the Community.
- 12.8 Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine or feminine pronoun shall include the neuter, masculine and feminine.
- 12.9 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration 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.
- 12.10 Captions. The captions of each Article and Section hereof, as to the contents of each Article and 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 Article or Section to which they refer.
- 12.11 Preparer. This Declaration was prepared by Donald A. Rolander & Rolander, 11660 Alpharetta Highway, Suite 520, Roswell, Georgia 30076.
- 12.12 Notice. Notices provided for in this Declaration or the Articles or Bylaws shall be in writing, and shall be addressed to any Owner at the address of the Lot and to the Declarant or the Association at the address of their respective registered agent in the State of Georgia. Any Owner may designate a different address for notices to such Owner by giving written notice to the Association.

Notices addressed as above shall be deemed delivered three (3) business days after mailing by United States Registered or Certified Mail, postpaid, or upon delivery when delivered in person, including delivery by Federal Express or other reputable courier service.

- 12.13 Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.
- 12.14 Indemnification. To the fullest extent allowed by the Georgia Nonprofit Corporation Code, and in accordance therewith, the Association shall indemnify every current and former officer, director and committee member against any and all expenses, including, but not limited to, attorney's fees, imposed upon or reasonable incurred by any officer, director or committee member in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which such officer, director or committee member may be a party by reason of being or having been an officer, director or committee member. The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers, directors and committee members shall have not personal liability with respect to any contract or other commitment made by them in good faith, on behalf of the Association and the Association shall indemnify and forever hold each such officer, director and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director or committee member, or former officer, director or committee member, may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.
- 12.15 Inspection of Books and Records. This Declaration, the Bylaws, copies of rules and use restrictions, membership register, books of account and minutes of meeting of the members of the Board and of Committees shall be made available for inspection and copying by any member of the Association or by the duly appointed representative of any member and by holders, insurers or guarantors of any first Mortgage at any reasonable time and for a purpose reasonable related to such Person's interest as a member or holder, insurer or guarantor of a first Mortgage at the office of the Association or at such other reasonable place as the Board shall prescribe. The Board shall establish reasonable rules with respect to (i) notice to be given to the custodian of the records; (ii) hours and days of the week when such an inspection may be made; and (iii) payment of the costs of reproducing copies of documents. Every director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the association. The right of inspection by a

director includes the right to make extra copies of documents at the reasonable expense of the Association.

- 12.16 Financial Statements. Financial statements for the Association shall be prepared annually on such accounting basis as may be required by the Board of Directors; provided, however, after having received the financial statements, the Owners, by a majority of the Total Association Vote and the consent of Declarant, may require that the accounts of the Association be audited as a common expense by a certified public accountant. Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs, such holder shall be entitled to receive a copy of audited financial statements within 90 days of the date of the request.
- 12.17 Notice of Sale, Lease or Acquisition. Prior to the sale or lease of a Lot, the owner shall provide the Association with written notice of the name of the purchaser or lessee, as the case may be, and such other information as the Board may reasonable require. Upon acquisition of a Lot each new Owner shall provide the Association with written notice of the name and mailing address of the Owner and such other information as the Board may reasonable require.
- 12.18 Agreements. Subject to the prior approval of Declarant all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors, shall be binding upon all Owners, their heirs, legal representatives, successors, assigns and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.
- 12.19 Variances. Notwithstanding anything to the contrary contained herein, the Board of Directors shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto, if it determines that waiver of application or enforcement of the provision in a particular case is warranted and would not be inconsistent with the overall scheme of development for the Community.
- 12.20 Litigation. Not judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least 75% of the Total Association Vote and the consent Declarant. This Section shall not apply to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided herein, (c) proceeding involving challenges to *ad valorem* taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made unilaterally the Declarant as provided herein or is approved by the percentage votes necessary to institute proceedings as provided above.

IN WITNESS WHEREOF, the Declarant herein hereby executes this instrument under seal, this 3 day of OCTOBER , 1996.

DECLARANT:
LANIER/FORSYTH LLC, a Georgia Limited Liability
Company

By: _____

LANIER FORSYTH DEVELOPMENT CORPORATION
MANAGER

Signed, sealed and delivered
In the presence of:

Witness

Notary Public