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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
•-  
CHATTAHOOCHEE LANDING SUBDIVISION

STATE OF GEORGIA  
COUNTY OF GWINNETT

THIS DECLARATION is made on the date hereinafter set forth by W.J. U. ENTERPRISES, INC., a Georgia Corporation (hereinafter collectively referred to as "Declarant"),

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located in Land Lot 322 of the 6th District of the City of Duluth, Gwinnett County Georgia, which property is more particularly described in Exhibit "A" attached hereto and made a part of this Declaration: and,

WHEREAS, the Declarant intends to develop on lands including the real property described above a development to be known as Chattahoochee Landing Subdivision (hereinafter referred to as the "Development"); and

WHEREAS, Declarant has caused the Association (as hereinafter defined) to be formed as a non-profit civic organization to perform certain functions for the common good and general welfare of the Owners (as hereinafter defined);

NOW, THEREFORE, the Declarant hereby declares that all of the property described in Exhibit "A" shall be held, sold and conveyed subject to this Declaration of Covenants, Conditions and Restrictions, which is for the purpose of enhancing and protecting the desirability and attractiveness of, and which shall run with, the real property, and be binding on all parties having any right, title or interest in the described property or any part thereof, and shall subject to all limitations herein provided, inure to the benefit of each Owner, his heirs, grantees, distributees, successors and assigns and to the benefit of the Association.

ARTICLE I

DEFINITIONS

The following words, when used in this Declaration of Covenants, Conditions and Restrictions, shall have the following meanings:

1.01 Association. 'Association' means Chattahoochee Homeowners Association, Inc., a non-profit corporation organized under the Georgia Nonprofit Corporation Code, and its successors and assigns.

1.02 Board. 'Board' means the Board of Directors of the Association.

1.03 By-Laws. "By-Laws" means the By-Laws of the Association.

1.04 Common Property. 'Common Property' means all real property (together with any and all improvements now or hereafter located thereon) owned by the Association or in certain instances over which the Association has been granted permanent easements, for the common use and enjoyment of the Owners.

1.05 Declarant. 'Declarant' means N. U. ENTERPRISES, INC., a Georgia Corporation, and its successors and assigns, including, but not limited to, any person, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof, which acquires all or substantially all of the Development then owned by Declarant (or subsequent successors in interest), together with its rights hereunder, by conveyance or assignment from Declarant, or judicial or non-judicial foreclosure, for the purpose of development and/or construction on the Property.

1.06 Lot. "Lot" means any numbered parcel of land shown upon (i) that certain plat of survey prepared by Land Development Co., dated August 26, 1994, and recorded in Flat Book 63, Page 242, Gwinnett County, Georgia Records, or as similarly shown on supplemental surveys of such tract or such additional tracts as may be added to the Property from time to time, as provided herein: provided however, that no portion of the Common Property shall ever be a lot except as provided for in Section 2.04.

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1.07 Member. "Member" means any member of the Association.

1.08 Owner. "Owner" means the record owner (including Declarant) whether one or more persons or entities, of a fee simple title to any Lot, provided, however, that where fee simple title has been transferred and is being held merely as security for repayment of a loan, the person or entity who would own the Lot in fee simple if such loan were paid in full shall be considered the Owner.

1.09 Property. "Property" means that certain real property (other than Common Property) hereinabove described.

1.10 Restrictions. "Restrictions" means all covenants, restrictions, easements, charges, liens and other obligations created or imposed by this Declaration.

1.11 Structure. "Structure" means any thing or object the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration and not limitation, any building or part thereof, garage, porch, shed, greenhouse or bathhouse, coop or cage, covered or uncovered patio, swimming pool, fence, curbing, paving, wall, tree, shrub, sign, signboard, temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such Lot.

## ARTICLE II

### COMMON PROPERTY

#### 2.01 Conveyance of Common Property.

(a) The Declarant may from time to time convey to the Association or grant easements to the Association, at no expense to the Association and in accordance with this Section, real and personal property for the common use and enjoyment of the Owners (such real and personal property ~s hereinafter collectively referred to as "Common Property) and, to the extent set forth in this Declaration of Covenants, Conditions and Restrictions, the general public. The Association hereby covenants and agrees to accept from the Declarant all such convenances of Common Property.

(b) It is contemplated by the Declarant that the Declarant will convey to the Association Common Property for scenic and natural area preservation and for general recreational use. The Declarant may, at Declarant's sole discretion, modify, alter, increase, reduce and otherwise change the Common Property contemplated to be conveyed to the Association in accordance with this subsection (b) of this Section 2.01 at any time prior to conveyance of such Common Property to the Association,

(c) In addition to the property described in subsection (b) of this Section 2.01, the Declarant may convey to the Association in accordance with this Section 2.01 such other real and personal property as the Declarant may determine to be necessary or proper for the completion of the Development.

(d) Notwithstanding any legal presumption to the contrary, the fee title to, and all rights in, any portion of the Property owned by the Declarant and designated as Common Property or designated for public use shall be reserved to the Declarant until such time as the same shall be conveyed to the Association or to any municipality or other governmental body, agency or authority,

2.02 Right of Enjoyment. Every Owner shall have a right and easement to use and enjoy the Common Property, which right shall be appurtenant to and shall pass with the title to every Lot upon transfer: provided, however, that no Owner shall do any act which interferes with the free use and enjoyment of the Common Property by all other Owners. The Association may permit persons who are not Owners to use and enjoy any part or all of the Common Property subject to such limitations, and upon such terms and conditions, as it may from time to time establish. The right and easement of enjoyment granted or permitted by this Section 2.02 is subject to suspension by the Association as provided in Section 2.3 (f) and 3.06.

2.03 Right of The Association. The rights and privileges conferred in Section 2.02 hereof shall be subject to the right of the Association acting through the Board to:

(a) promulgate rules and regulations relating to the use, operation and maintenance of the Common Property:

(b) charge reasonable fees in connection with the admission to and use of facilities or services; provided that in setting any such fee the Board may establish reasonable classifications which shall be uniform within each such class but need not be uniform between such classes:

(c) suspend, pursuant to Section 3.05, the voting rights of any Member and the right of enjoyment granted or permitted by Section 2.02:

(d) grant easements or rights of way over Common Property to any municipality or other governmental body, agency or authority, to any quasi-public agency, or to any utility company or cable television system:

(e) enforce all applicable provisions of valid agreements of the Association relating to the Common Property or any part thereof:

(f) borrow money for the purpose of carrying out the activities of the Association, including the acquisition, construction, improvement, equipping and maintenance of Common Property, and in aid thereof to encumber by deed to secure debt, mortgage or other security interest, any or all of the Association's property, including Common Property and revenues from assessments, user fees and other sources; provided, however, that the Common

• Property may not be mortgaged or pledged except upon the affirmative vote of seventy-five percent (75%) of the Owners.

(g) dedicate or transfer all or any part of the Common Property or interests therein to any municipality or other governmental body, agency or authority for such purposes and subject to such provisions and conditions as may be agreed upon by the association and such grantee, including a provision that such property or interest shall cease to be subject to this Declaration or all or any part of the Restrictions while held by an such municipality or other governmental body, agency or authority;

(h) to sell, lease or otherwise convey all or any part of its properties and interest therein, provided that at least seventy-five percent (75%) of the Owners have, by affirmative vote, consented thereto.

2.04 Types of Common property. At the time of the conveyance of any real property or grant of easement by the Declarant to the Association to be used as Common Property, the Declarant shall designate in the deed of conveyance or easement that such real property is to be Common Property, and further may designate in the deed of conveyance or easement the specific or general purpose or purposes for which such real property or any portion thereof may be used, and in such event, such real property or portion thereof shall not, without a two-thirds (2/3) vote of each class of Member of the Association, be used for any different purpose or purposes without the prior written consent of the Declarant.

(a) It is contemplated that certain easements for the erection and maintenance of entrance monuments, subdivision signs, wall, fences and other structures intended to provide an attractive atmosphere or to provide privacy to Owners within the Development will be reserved by the Declarant and set forth on plats or survey of the Development recorded in the County Records. Such easements shall be perpetual in duration and shall include the right to erect, maintain, repair, replace and re-erect any such structures within the easement areas, as well as the right to plant grass, plants, flowers, shrubs and trees, to tend and garden the same, and to generally landscape the area within said easements to keep them clean, attractive and uniform in appearance for the benefit of all Owners within the Development. Said easement areas shall be designated as such and all Owners taking title to any Lot upon which such easement lies will take title subject to the easement rights set forth herein, as well as such rights as may be set forth in the deed conveying such easements to the Association. Such easements shall be Common Property.

(b) Encroachment Easements. If any buildings or other improvements initially constructed on any of the Lots, including without limitation any eaves, roof overhangs, balconies, siding, porches, or other structures which may be attached to the walls and roof of such buildings, and 'which may encroach onto or over or extend into the air space of any portion of the Common Property, or, conversely, if any such improvements initially constructed on the Common Property encroach onto or over portions of any Lot, a

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valid easement for the encroachment and for the maintenance, repair and replacement thereof, shall exist so long as the encroachment exists.

2.05 Delegation of Use. Any Owner may delegate to the members of his family or his tenants who reside on a Lot, in accordance with the By-Laws, his right to use and enjoy the Common Property.

### ARTICLE III

#### THE -HOMEOWNERS' ASSOCIATION

3.D1 Purposes, Powers and Duties of The Association. The Association shall be formed as a non-profit civic organization for the sole purpose of performing certain-functions for the common good and general welfare of the residents of the Development. The Association shall have no power or duty to do or perform any act or thing other than those acts and things which will promote in some way the common good and general welfare of the residents of the Development. To the extent, and only to the extent, necessary to carry out such purpose, the Association (a) shall have all of the powers of a corporation organized under the Georgia Nonprofit Corporation Code and (b) shall have the power and duty to exercise all of the rights, powers and privileges and to perform all of the duties and obligations of the Association as set forth in this Declaration.

3.02 Membership in the Association. Every Owner shall automatically be a member of the Association and such membership shall terminate only as provided in this Declaration of Covenants, Conditions and Restrictions.

3.03 Voting Rights. Subject to the following provisions of this Section 3.03. the Association shall have two classes of voting membership; Class A and Class B.

(a) Class A. Every person who is an Owner, with the exception of the Declarant except as otherwise set forth herein. shall be a Class A member and shall be entitled to one vote for each Lot owned. ~When more than one person is a Class A member by virtue of an ownership interest in the same Lot, the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. In the event of disagreement among such persons and an attempt by two or more of them to cast the vote of such Lot. such persons shall not be recognized and the vote of such Lot shall not be counted. The membership of Class A members shall automatically terminate upon the members sale of his Lot.

however, no termination of Class A membership shall affect such mender's obligation to pay assessments, as hereinafter provided for, due and payable for any period prior to the date of such termination, and there will be no refund for assessments paid for periods falling after the date of such termination.

(b) Class B. The Declarant shall be the sole Class B member. Class B membership shall be a full voting membership and during its existence the Class B member shall be entitled to vote on all matters and in all events. The Class S member shall be entitled to three (3) votes for each Lot owned by it. •The Class B membership shall cease and shall be converted to Class A membership at such time as the first of the following events occur: (a) the expiration of five (5) years from the date of recording of this Declaration; (b) the date as of which seventy-five percent (75t of the Lots which may be developed on the Property and on the Additional Property shall have been conveyed, by either the Declarant or by a builder who purchased the Lot from Declarant for the purpose of erecting a dwelling thereon., to an individual Owner or Owners for residential occupancy; or (0 the surrender by the Declarant of the authority to appoint and remove members of the Board of the Association by an express amendment to this Declaration executed and recorded by the Declarant; provided, however, that so long as any Mortgagee of Declarant holds a security interest in any portion of the Property, as security for a Development Loan to Declarant. the Class B membership shall not terminate without the prior written consent of such Mortgagee. If at the time of termination of the Class B membership, Declarant still owns any Lots, then as to each Lot owned by Declarant. Declarant shall be deemed to be a Class A member.

3,04 Board of Directors and Officers.

(a) Board, The affairs of the Association shall be managed by

(a) Board of Directors. The number of directors and the method of election of directors shall be as set forth in this Declaration and in the By-Laws of the Association. Except to the extent otherwise expressly required or authorized by the Georgia Nonprofit Corporation Code or this Declaration, the Association's By-Laws or Articles of Incorporation, the powers inherent in or expressly granted to the Association may be exercised by the Board, acting through the officers of the Association, without any further consent or action on the part of the Members.

(b) Officers. The number of officers and the method of election of officers shall be as set forth in this Declaration and the By-Laws of the Association. Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the By-Laws of the Association, officers of the Association shall be appointed by the Board until such time as Declarant no longer has the right to appoint members to the Board.

(c) Casting of Votes. The votes of the members shall be cast under such rules and procedures as may be prescribed on this Declaration or in the By-Laws of the Association, as amended from time to time, or by law.

3.05 Board of Directors. The affairs of the Association shall be managed by a Board of Directors. The number of Directors and the method of election of Directors shall be as set forth in this Declaration and the Bylaws of the Association,

3.06 Suspension of Membership. The Board may suspend the voting rights of any Member and the right of enjoyment of the Common Property of any person who:

(a) shall be subject to the Right of Abatement, as defined in Section 8.02 by reason of having failed to take the reasonable steps to remedy a violation or breach of the Restrictions within thirty (30) days after having received notice of the same pursuant to the provisions of Section 5.11 or 8.02 hereof:

(b) shall be delinquent in the payment of any assessment levied by the Association pursuant to the provisions of Article IV hereof: or

(c) shall be in violation of the rules and regulations of the Association relating to the use, operation and maintenance of Common Property:

(d) any suspension shall be for the balance of the period in which said Member or person shall remain in violation, breach or default, as aforesaid, except that in the case of a violation described in subsection (c) of this Section 3.06, the suspension may be for a period not to exceed 60 days after the cure or termination of such violation. No such suspension shall prevent an Owner's ingress to or egress from his Lot.

3.07 Voting Procedures. The procedures for the election of Directors of the Association and the resolution of such other issues as may be brought before the membership of the Association shall be governed by this Declaration, the Georgia Nonprofit Corporation Code, the Articles of Incorporation of the Association, and the By-Laws of the Association, as each shall from time to time be in force and effect.

3.08 Control by Declarant and Appointment of the Board. Until such time as Declarant no longer has the right to appoint members to the Board, the Board of the Association shall consist of three (3) members. Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the By-Laws of the Association, the Declarant hereby retains the right to appoint two (2) members to the Board. The rights of Declarant to appoint members of the Board also includes the right to remove and replace its appointees until such time as its right to appoint members to the Board ceases. Declarant shall retain the right to appoint and remove its members of the Board until such time as the first of the following events shall occur: (i) the expiration of five (5) years from the date of the recording of this Declaration; (ii) the date upon which seventy-five percent (75%) of the Lots which may be developed on the Property and on the Additional Property shall have been conveyed, by either Declarant or by a builder who purchased the Lot from Declarant for the purpose of erecting a dwelling thereon, to an individual Owner or Owners for residential occupancy; on (iii) the surrender by Declarant of the authority to appoint and replace directors by an express amendment to this Declaration executed and recorded by Declarant. Upon the

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expiration of the Declarant's right to appoint and remove directors of the Association pursuant to the provisions of this Section, such right shall automatically pass to the Owners, including Declarant, if Declarant then owns one or more Lots. Upon the final expiration of all rights of Declarant to appoint and replace directors of the Association, a special meeting of the Association shall be called. At such special meeting, the Owners shall elect a new Board of Directors which shall undertake the responsibilities of the Board, and Declarant shall deliver the books, accounts, and records, if any, which Declarant has kept on behalf of the Association, and any agreements or contracts executed by or on behalf of the Association during such period which Declarant has in its possession. Each Owner by acceptance of a deed to or other conveyances of a Lot vests in Declarant such authority to appoint and replace directors and officers of the Association as provided in this Section. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law and any other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

3.09 Distribution of Assets Upon Dissolution. In the event of the dissolution of the Association, the assets thereof shall be distributed to one or more public bodies, corporate or politic or conveyed to one or more non-profit organizations having purposes similar to those of the Association.

#### ARTICLE IV

##### ASSESSMENTS AND MAINTENANCE CHARGES

4.01 Covenant for Assessments and Creation of Lien and Personal Obligations. The Declarant, to the extend that Declarant is an Owner, hereby covenants and agrees, and each Owner, jointly and severally, for himself, his heirs, distributees, legal representatives, successors and assigns, by acceptance of a deed for a Lot, whether or not the covenants contained herein shall be expressed in any such deed, hereby covenants and agrees as follows:

(a) to pay to the Association the annual assessments which may or shall be levied by the Association pursuant to this Declaration against all Lots owned by him:

(b) to pay to the Association any special assessments for capital improvements and other charges which may or shall be levied by the Association pursuant to this Declaration against all Lots owned by him:

(c) that there is hereby created a continuing charge and lien upon all Lots owned by him against which all such assessments are made to secure payment of such assessments and any interest thereon as provided in Section 4.07 hereof and costs of collection including reasonable attorney's fees:

(d) that such continuing charge and lien on such Lots binds such Lots in the hands of the then Owner, and the Owner's heirs, devisees, legal representatives, successors and assigns. Such charge and lien is superior to any and all charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon such Lots whether arising from mortgage, deed to secure debt, or other instrument, except (i) such liens for taxes or other public charges as are by applicable law made superior, and (ii) all deeds to secure debt given to secure a loan the proceeds of which are used (1) to purchase a Lot or Lots (together with any and all Structures which may from time to time be placed or located thereon) and (2) to finance the construction, repair or alteration of Structures:

(e) that no sale or transfer at foreclosure or in lieu of foreclosure shall relieve any Lot or Lots from liability for any assessment thereafter assessed:

(f) that all annual and special assessments (together with interest thereon as provided in Section 4.07 of this Declaration and costs of collection including reasonable attorneys fees) levied against any Lot or Lots owned by him during the period that he is an Owner shall be (in addition to being a continuing charge and lien against such Lot or Lots as provided in Section 4.01(c) of this Declaration) a personal obligation which will survive any sale or transfer of the Lot owned by him: provided, however, that such personal obligation for delinquent assessment shall not pass to an Owner's successor in title unless expressly assumed by such successor.

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4.02 Purpose of Assessment. The assessments levied by the Association shall be used exclusively for the purpose of providing for the common good and general welfare of the residents of the Development, including, but not limited to, and in addition to other purposes set forth in this Declaration, security, the acquisition, construction, improvement, maintenance and equipping of Common Property, enforcement of the Restrictions contained in this Declaration, the payment of operating costs and expenses of the Association and the payment of all principal and interest when due on all debts owed by the Association.

4.03 Accumulation of Funds Permitted. The Association shall not be obligated to spend in any calendar year all the sums collected in such year by way of annual assessments or otherwise, and may carry forward, as surplus, any balances remaining; nor shall the Association be obligated to apply such surplus to the reduction of the amount of the Annual Assessments in any succeeding year, but may carry forward from year to year such surplus as the Board may deem to be desirable for the greater financial security of the Association and the effectuation of its purposes.

4.04 Annual Assessment or Maintenance Charge. Subject to the terms of this Article, each Lot in the Property is hereby subjected to an annual maintenance charge for the purpose of creating a fund to be known as the maintenance fund' which maintenance charge and assessment will be paid by the Owner or Owners of each Lot within the Property (and any area annexed under the jurisdiction of the Association) in advance in monthly, quarterly or annual installments. The annual maintenance charge and assessment will commence as to each Lot on the first day of the month following the earliest to occur of the following events: (a) upon the occupancy of a permanent dwelling located on the Lot as a residence; or (b) upon the conveyance of the Lot by Declarant to an Owner or tenant for residential occupancy; or (c) upon the conveyance by a builder who has purchased the Lot from Declarant for the purpose of erecting a dwelling thereon to an Owner or tenant for residential occupancy. Neither the Declarant nor any builder who has purchased a lot from Declarant for the purpose of erecting a dwelling thereon shall be subject to the annual maintenance charge and assessment. Notwithstanding the preceding, the annual maintenance charge and assessment will commence as to each Lot owned by Declarant or a builder upon the occupancy of a permanent dwelling located thereon as a residence. The Declarant is authorized, although not required, to advance funds to the Association necessary to further the purposes of the Association, and in the event such funds are advanced, the repayment of same shall be secured by a lien upon the property of the Association. Beginning on the date hereof, and from year to year thereafter, the annual maintenance charge and assessment shall be in such amount as the needs of the Association may, in the judgment of the Board of Directors require. Whether such assessment shall be payable monthly, quarterly or annually, and the due dates thereof, will be determined by the Board of Directors. The Association shall use the proceeds of said maintenance fund in providing for normal, recurring maintenance charges for the Common Property for the use and benefit of all residents of said Property. Such uses and benefits to be provided by said Association may include, by way of clarification, and not limitation, any and all of the following: normal, recurring maintenance of the Common Property (including, but not limited to, mowing, edging, watering, clipping, sweeping, Droning, raking and otherwise caring for existing landscaping and maintaining and repairing recreational facilities) and the acquisition and installation of capital improvements to such Common Property, such as sprinkler systems, providing that the Association shall have no obligation (except as expressly provided hereinafter) to make capital improvements to the Common Property:  
payment of all legal and other expenses incurred in connection with the enforcement of all recorded covenants, restrictions and conditions affecting the Property to which the maintenance fund applies; payment of all reasonable end necessary expenses in connection with the collection and administration of the maintenance charge and assessment: employment of security guards or watchmen, if determined necessary: caring for vacant lots: and doing any other thing or things necessary or desirable in the opinion of the Board or membership of the Association to keep the property neat and in good order, or which is considered of general benefit to the Owners or occupants of the Property, it being understood that the judgment of the majority of the Members of the Association in the expenditure of said funds and the determination of which constitutes normal, recurring maintenance shall be final and conclusive so long as such judgment is exercised in good faith. The Association shall, in addition, establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the

Common Property, The fund shall be established and maintained out of regular annual assessments,

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4.05 Special Assessments for Working Capital Fund, Nonrecurring Maintenance, and Capital Improvements. In addition to the annual assessment authorized by this Article IV, the Association may levy:

(a) upon the first sale to an Owner who will individually or through tenants or assigns occupy a Lot, such sale to be made by Declarant or by a builder who has purchased the Lot from Declarant for the purpose of erecting a dwelling thereon, a special assessment equal to two (2) months' estimated regular assessments, which shall be collected at the closing of such sale for the benefit of the Association. The aggregate fund established by such special assessment shall be maintained in a segregated account, and shall be for the purpose of insuring that the Association will have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the Board: and

(b) in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of nonrecurring maintenance, or the acquisition, construction, reconstruction, repair or replacement of a capital improvement upon any Common property, including fixtures and personal property related thereto, provided that any such assessment shall have been approved by a two-thirds (2/3) vote of each class of Members of the Association who are present in person or by proxy at meeting duly called for such purpose.

4.06 Notice and Quorum. Written notice of any meeting called for the purpose of taking any action authorized under Sections 4.04 or 4.05 shall be sent to all Members, or delivered to their residence, not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the proceeding meeting.

4.07 Effect of Nonpayment of Assessments. Any Assessment which is not paid within thirty (30) days after the Due Date shall bear interest from the Due Date at the rate of twelve percent (12%) per annum or at such rate as the Board may from time to time establish, provided, however, that in no event shall the Board have the power to establish a rate of interest in violation of the laws of the State of Georgia. In the event of default in the payment of any one or more installments of an assessment, the Board may declare any remaining balance of the assessment at once due and payable. In the event that an Owner shall fail to pay fully any portion of any assessment on or before the date on which payment is due, such unpaid portion (including any remaining balance declared immediately due and payable in accordance with the preceding sentence), together with interest and costs of collection including reasonable attorneys' fees, shall be a binding personal obligation of such Owner, as well as a lien on such Owner's Lot enforceable in accordance with the provisions of this Declaration.

4.08 Certificate of Payment. Upon written demand by an Owner, the Association shall within a reasonable period of time issue and furnish to such Owner a written certificate stating that all assessments (including penalties, interest and costs, if any) have been paid with respect to any Lot owned by said Owner as of the date of such certificate, or that all assessments, interest and costs have not been paid, setting the amount then due and payable. The Association may make a reasonable charge for the issuance of such certificate. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser of, or lender on, the Lot in question.

ARTICLE V

ARCHITECTURAL CONTROL

5.01 Architectural Control Committee: Creation and Composition. An architectural Control Committee (the "AX") shall be established consisting of three (3) individuals to be appointed by the Board of Directors,

5.02 Purpose, Powers and Duties of the ACC. The purpose of the ACC is to review and approve any proposed installation, construction or alteration of any structure on any Lot. All plans shall be submitted to the ACC for

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approval (I) as to whether the proposed installation, construction or alteration is in conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the standards of the Development. and (ii) as to the location of Structures with respect to topography, finished ground elevation and surrounding Structures. To the extent necessary to carry out such purpose, the 4CC shall have all of the powers and duties to do each and every thing necessary, suitable, convenient or proper for, or in connection with, or incidental to, the accomplishment of such purpose including, without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any Structure on any Lot,

5.03 Officers, Subcommittees and Compensation. The members of the 4CC shall appoint a Chairman from among their number and may appoint from among their number such other officers and subcommittees of members of the 4CC as they shall from time to time determine necessary. The members of the ACC shall be reimbursed by the Association for traveling expenses and other out-of-pocket costs incurred in the performance at their duties as members of the ACC.

5.04 Operations of the ACC.

(a) Meetings. The ACC shall hold regular meetings at least once every three (3) months or more often as may be established by the ACC. Special meetings may be called by the Chairman and shall be called by the Chairman upon the written request of a majority of the members of the 4CC then in office. Regular and special meetings of the 4CC shall be held at such time and at such place as the 4CC shall specify. Notice of each regular or special meeting of the ACC shall be mailed to each member thereof at his residence or at his usual place of business at least three (3) days before the day the meeting is to be held. Notice of regular and special meetings need not specify the purpose or purposes for which the meeting is called. Notice of a meeting need not be given to any member of the 4CC who signs a waiver of notice either before or after the meeting. Attendance of a member of the 4CC at a meeting shall constitute a waiver of notice of such meeting and shall constitute a waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened, except when the member states, at the beginning of the meeting, any such objection or objections to the transaction of business. At each meeting of the ACC, the presence of a majority of the members then in office shall constitute a quorum for the transaction of business. Except as otherwise provided herein, the act of a majority of the members of the 4CC present at any regular or special meeting thereof at which a quorum is present shall constitute the act of the 4CC. In the absence of a quorum, any member of the 4CC present at the time and place of the meeting may adjourn the meeting from time to time until a quorum shall be present. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. The ACC shall maintain both a record of votes and minutes for each of its meetings. The 4CC shall make such records and minutes available at reasonable places and times for inspection by Members of the Association and by the Secretary. Any action required to be taken at a meeting of the 4CC, or any action which may be taken at a meeting of the 4CC, may be taken without a meeting if written consent, setting forth the action so taken, shall be signed by all the members of the ACC and be filed within the minutes of the proceedings of the ACC. Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any document filed by the 4CC.

(b) Activities.

(I The 4CC shall adopt and promulgate the Design Standards described in Section 5.05 hereof and shall, as required, make findings, determinations, rulings, and orders with respect to the conformity with said Design Standards of plans and specifications to be submitted for approval to the ACC pursuant to the provisions of this Declaration. The ACC shall, as required, issue permits, authorizations, or

approvals, which may include specified requirements or conditions, pursuant to the provisions of this Declaration,

(ii) Any two (2) or more members of the 4CC may be authorized by the 4CC to exercise the full authority of the 4CC with respect to the adoption or promulgation of the Design Standards. The unanimous action of the two (2) or more members with respect to the matters specified shall be final and binding upon the 4CC and upon any applicant for an approval, permit or authorization, subject, however, to review and modification by the 4CC on

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its own motion or appeal by the applicant to the AGO as provided in this paragraph (ii). Written notice of the decision of such *two* (2) or more members shall, within five (6) working days thereof, be given to any applicant for an approval, permit or authorization. The applicant may, within ten (10) days after receipt of notice of any decision which he deems to be satisfactory, file a written request to have the matter in question reviewed by the ACC. Upon the filing of any such request, the matter with respect to which such request was filed shall be submitted to, and reviewed promptly by, the AGO, but in no event later than thirty (30) days after the filing of such request. The decision of a majority of the members of the ACC with respect to such matter shall be final and binding.

#### 5.05 Design Standards.

(a) The ACC shall from time to time adopt, promulgate, amend, evoke and enforce guidelines (the "Design Standards") for the purposes of:

(i) governing the form and content of plans and specifications to be submitted to the ACC for approval pursuant to the provisions of this Declaration:

(ii) governing the procedure for such submission of plans specifications:

(iii) establishing guidelines with respect to the approval and disapproval of design features, architectural styles, exterior colors and materials, details of construction, location and size of Structures and all other matters that require approval by the AGO pursuant to this Declaration:  
and

(iv) assuring the conformity and harmony of external design and general quality of the Development.

(b) The AGO shall make a published copy of its current Design Standards readily available to Members and prospective Members of the Association and to all applicants seeking the ACC's approval.

5.06 Submission of Plans and Specifications No Structure shall be commenced, erected, placed, moved onto or permitted to remain on any Lot nor shall any existing Structure upon any Lot be altered in any way which materially changes the exterior appearance of the Structure or Lot, unless plans and specifications therefor shall have been submitted to and approved in writing by the ACC. Such plans and specifications shall be in such form., and shall contain such information as may be reasonably required by the ACC in the Design, Standards, including where applicable, and without being limited to:

(a) a site plan showing the location of all proposed and existing Structures on the Lot including building setbacks, open space, driveways, walkways and parking spaces including the number thereof and all siltation and erosion control measures:

(b) a foundation plan:

(c) a floor plan:

(d) the exterior elevations of all proposed Structures and alterations to existing Structures, as such Structures shall appear after all back-filling and landscaping are completed:

(e) specifications of materials color scheme, lighting scheme and other details affecting the exterior appearance of & i proposed Structures and alterations to existing Structures: and

- (f) plans for landscaping and grading.

5.07 Approval of Plans and Specifications. Upon approval by the AGO of any plans and specification submitted pursuant to this Declaration, two (2) copies of such plans and specifications, as approved, shall be deposited for permanent record with the AGO and copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same. Approval for use in connection with any Lot or Structure of any plans and specifications shall not be deemed a waiver of the ACC's right, in its discretion, to disapprove similar plans and specifications or any of the features or elements included therein if such plans, specifications, features

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or elements are subsequently submitted for use in connection with any other Lot or Structure. Approval of any such plans and specifications relating to any Lot or Structure, however, shall be final as to that Lot or Structure and such approval may not be revoked or rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specifications, as approved, and any conditions attached to any such approval.

5.08 Disapproval of Plans and Specifications. The 4CC shall have the right to disapprove any plans and specifications submitted pursuant to this Declaration for any of the following reasons:

- (a) the failure to include information in such plans and specifications as may have been reasonably requested;

- (b) the failure of such plans or specifications to comply with this Declaration or the Design Standards;

- (c) any other matter which, in the judgment of the ACC, would be 'likely to cause the proposed installation, construction or alteration of a Structure (i ) to fail to be in conformity and harmony of external design and general quality with the standards of the Development as set forth in the Design Standards, or (ii) as to location to be incompatible with topography, finished ground elevation and surrounding Structures. In any case in which the 4CC shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. In any such case the AGO shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal may be prepared and submitted for approval.

5.09 Obligation to Act. The ACC shall take action on any plans and specifications submitted as herein provided within thirty (30) days after receipt thereof. Approval by the ACC, if granted, together with any conditions imposed by the ACC, shall be placed in writing on the plans and specifications and shall be returned to the applicant. Failure by ACC to take action within thirty (30) days of receipt of plans and specifications submitted for approval shall be deemed approval of such plans and specifications.

5.10 Inspection Rights. Any employee or agent of the Association or the ACC may, after reasonable notice, at any reasonable time or times enter upon any Lot and Structure thereon for the purpose of ascertaining whether the installation, construction, alteration or maintenance of any Structure or the use of any Lot or Structure is in compliance with the provisions of this Declaration: and neither the Association, nor the 4CC, nor any such agent shall be deemed to have committed a trespass or other wrongful act solely by reason of such entry or inspection, provided such inspection is carried out in accordance with the terms of this Section.

5.11 Violations. If any Structure shall be erected, placed, maintained or altered upon any Lot, otherwise than in accordance with the plans and specifications approved by the ACC pursuant to the provisions of this Article, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If in the opinion of the 4CC such violation shall have occurred, the 4CC shall notify the Association. If the Board shall agree with the determination of the 4CC with respect to the violation, then the Board shall provide written notice to the Owner by certified mail, setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation. If the owner shall not have taken reasonable steps toward the required remedial action within thirty (30) days after the mailing of the aforesaid notice

of violation, then the Association shall have the Right of Abatement as provided in Section 8.02 hereof.

#### 5.12 Certification of Compliance,

(a) Upon completion of the installation, construction or alteration of any Structure in accordance with plans and specifications approved by the ACC, the 4CC shall, upon written request of the Owner thereof or upon the ACC's own initiative, issue a certificate of Compliance. identifying such Structure and Lot upon which such Structure is placed, and stating that the plans and specifications have been approved and that such Structure complies with such plans and specifications. A copy of said Certificate shall be filed for permanent record with the plans and specifications on file with the 4CC.

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(b) Any Certificate of Compliance issued in accordance with the provisions of this Section shall be prima facie evidence of the facts herein stated; and as to any purchaser or encumbrancer in good faith and for value, or as to any title insurer, such certificate shall be conclusive evidence that all Structures on the Lot comply with all the requirements of this Article, provided, however, that the Certificate shall in no way be construed to certify the acceptability, sufficiency or approval by the ACC of the actual construction of Structures or of the workmanship, or to represent or warranty to any one the quality, function or operation of the Structures or of any construction, workmanship, engineering, materials or equipment.

The issuance of the Certificate shall in no way be construed to certify to any party that the Structures have been built in accordance with any applicable rule or regulation other than those of the ACC.

5.13 Fees. The ACC may impose and collect a reasonable and appropriate fee to cover the cost of inspections performed pursuant to Section

5.10. The fee shall be established from time to time by the ACC and published in the Design Standards.

5.14 Nondiscrimination by ACC. The ACC shall not discriminate against any applicant requesting its approval of plans and specifications because of such applicant's race, color, sex, religion, age or national origin. Further, the ACC in the exercise of its powers granted pursuant to this Declaration shall not take any action the intent or effect of which is to discriminate against persons of a particular race, color, sex, religion, age or national origin.

5.15 Liability for Defects. The Declarant, the Association, the Board of Directors, officers of the Association, or the ACC shall not be liable for any defects in any plans and specifications which it approves.

### ARTICLE VI

#### GENERAL COVENANTS AND RESTRICTIONS

6.01 Application. The covenants and restrictions contained in this Article V shall pertain and apply to all Lots and to all Structures erected or placed thereon.

6.02 Residential Use. All Lots shall be used for single-family residential purposes exclusively.

6.03 Signs. No sign of any kind shall be erected by an Owner or occupant of a Lot within the Development. Notwithstanding the foregoing, residents shall have the right to erect reasonable and appropriate signs, and For Sale and "For Rent" signs.

6.04 Vehicles. The term 'vehicles, as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, trucks, campers, buses, vans, and automobiles. All vehicles shall be parked within garages, driveways or other paved parking areas located on a Lot. Parking in yards or on streets within the Development is prohibited.

(a) No mobile home, living trailer, modular home, or prefabricated home, shall be permitted on any of the lots of said Subdivision,

(b) No lot owners shall allow junk cars or abandoned cars, boats, trailers, campers or trucks to be or remain on any lot. Each owner shall keep his or her lot and the structure thereon in

good order and repair including but not limited to the seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery, and the painting (or such appropriate external care) of the structure all in a manner and with such frequency as is consistent with good property management.

(c) No trucks or commercial vehicles shall be stored or parked on any lot except while engaged in transporting to or from a residence in the Subdivision.

6.05 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. No pets shall be kept, bred, or maintained for any commercial purpose. Cogs which are

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household pets shall at all times, whenever they are outside, be on a leash.

6.06 Nuisance. It shall be the responsibility of each Owner and occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. No property within the Development 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, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the Development, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Community. There shall not be maintained any plants or animals or device or thing of any sort whose activities on existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Development. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devised as may be used exclusively for security purposes, shall be located, installed or maintained

•Upon the exterior of an Lot unless required by law.

Any recreational vehicle or motor home stored in the Development for periods longer than twenty-four (24) hours shall be considered a nuisance and may be removed from the Development.

6.07 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 Development.

No shed, tool storage area, workshop, garage, outbuilding for storage of yard implements, clotheslines or drying yards shall be placed upon the property unless concealed by hedges, lattice work or screening (which screening may be the residence itself) unless acceptable to the Declarant or his designated official,

6.08 Antennae. No exterior antennae of any kind shall be placed, allowed, or maintained upon any portion of the Development, including any Lot, if such antenna is visible from any public or private street providing access to or located within the Development. Notwithstanding the above, no satellite dishes shall be placed, allowed, or maintained upon any portion of the Development, including any Lot. Each Owner and occupant of a Lot acknowledges that this provision benefits all Owners and occupants of Lots and each Owner and occupant of a Lot agrees to comply with this provision despite the fact That the erection of any outdoor antenna or similar device would be the most cost-effective way to transmit or receive the signals sought to be transmitted or received.

6.09 Tree Removal. No trees shall be removed except for (a) diseased or dead trees: (b) trees needing to be removed to promote the growth of other sees or for safety reasons: and (c) trees within ten (10) feet of the residence, driveway, walkways and septic field constructed or to be constructed on the Lot.

6.10 clotheslines Garbage Cans. Woodpiles. etc. All clotheslines, garbage cans, woodpiles, swimming pool pumps, filters and related equipment and other items shall be located or screened so as to be concealed from view of neighboring streets and property. All construction debris, rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate,

6.11 Subdivision of Lot. No lot shall be subdivided or its boundary lines changed.

6.12 Guns. The discharge of firearms in the Development is prohibited. The term “firearms” includes “B-B” guns, pellet guns, and small firearms of all types.

6.13 Fences. No fence or wall of any kind shall be erected, maintained, or altered on any Lot without the prior written approval of the ACC of plans and specifications for such fences and walls. Guidelines relating to the design, location and uses of fences and walls may be included in the Design Standards of the A0~,

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ARTICLE VII

EASEMENTS. ZONING AND OTHER RESTRICTIONS

7.01 Easements.

(a) Declarant hereby expressly reserves to the Declarant, its successors and assigns forever, the right to create perpetual easements in, on, over and under any part of the Property owned by Declarant for any purpose which Declarant deems necessary, including, by way of example, and not limitation, the following:

maintenance of (i) the erection, installation, construction and wires. lines, conduits and poles and the necessary or proper

attachments in connection with the transmission of electricity, telephone. cable television and other utilities and similar facilities:

(ii) the erection, installation, construction and maintenance of storm-water drains, land drains, public and private sewers, irrigation systems, pipelines for supplying gas, water and heat, and for any other public or quasi-public facility, service or function:

(iii) slope control purposes, including the right to grade and plant slopes and to prevent the doing of any activity which might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow;

(iv) the planting or re-planting of hedges, shrubbery, bushes, trees, flowers and plants of any nature:

(v) the erection, installation construction and maintenance of fences, walls, monuments, signs, etc. along streets in, around and along and at entrances to the Development, and the right to landscape such areas, plant, re-plant and prune hedges, shrubbery, bushes, trees, flowers, grass and plants of any nature: and

(b) No Owner shall have any right to use any easement created by the Declarant in, on or over any portion of the Property unless such easement has been assigned by the Declarant to the Association.

7.02 Easement Area. The words “Easement Area” as used herein shall mean those areas on any Lot with respect to which easements are shown on a recorded deed or on any filed or recorded map or plat relating thereto..

7,03 Entry. The Declarant and its employees, agents, successors and assigns, shall have the right at all reasonable times to enter upon all parts of each Easement Area for any of the purposes for which such Easement Area is reserved without being deemed to have committed a trespass or wrongful act solely by reason of such entry and the carrying out of such purposes, provided the same are done in accordance with the provisions of this Article. The Declarant and its employees, agents, successors and assigns shall be responsible for leaving each Lot in good condition and repair following any work or activity undertaken in an Easement Area pursuant to the provisions of Section 8.01.

7,04 Zoning and Private Restrictions. None of the covenants, restrictions or easements creating or imposed by this Declaration shall be construed as permitting any action prohibited by applicable zoning laws, or by the laws, rules or regulations of any governmental body. In the event of any conflict between such laws, rules or regulations and the covenants, restrictions and easements created or imposed by this Declaration, the

most restrictive provision shall govern and control.

## ARTICLE VIII

### ENFORCEMENT

- 8.01 Right of Enforcement. This Declaration and the Restrictions contained herein shall inure to the benefit of and shall be enforceable by (i) the Declarant so long as it is an Owner, (ii) the Association and (iii) each Owner, his legal representatives, heirs, successors and assigns.

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### 8.02 Right of Abatement.

(a) Except where different notice provisions are provided elsewhere in these Restrictions, in the event of a violation or breach of any Restriction contained in this Declaration, the Association shall give written notice by certified mail to the Owner setting forth in reasonable detail the nature of such violation or breach and the specific action or actions needed to be taken to remedy such violation or breach. If the Owner shall fail to take reasonable steps to remedy such violation or breach within thirty (30) days after the mailing of such written notice, then the Association shall have the Right of Abatement.

(b) The Right of Abatement, as used in these Restrictions, means the right of the Association, through its agents and employees, to enter at all reasonable times upon any Lot or Structure, as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove, or repair such violation, breach or other condition which may exist thereon contrary to the provisions hereof, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and such actions, provided such entry and such actions are carried out in accordance with the provisions of this Section, and with the cost thereof, including the costs of collection and reasonable attorney's fees, together with interest thereon at the lower at the highest rate permitted by law or 10% to be a binding personal obligation of such Owner enforceable in law, as well as a lien on such Owners Lot enforceable pursuant to the provisions of Section 8.04 hereof. Such lien shall be superior to any and all charges, liens or encumbrances which may in any manner arise or be imposed upon the Lot after such entry whether arising from or imposed by judgment or decree or by any agreement, contrary, mortgage, deed to secure debt, or other instrument, excepting only (i) such liens for taxes or other public charges as are by applicable law made superior. (ii) the liens created by Section 4.01 hereof and (iii) all deed to secure debt given to secure a loan the proceeds of which are used (1) to purchase a lot or lots (together with any and all Structures which may from time to time be placed or located thereon) and (2) to finance the construction, repair or alteration of Structures.

8.03 Specific Performance. Nothing contained in this Declaration shall be deemed to affect or limit the rights of the Declarant, the Association or any Owner to enforce the Restrictions by appropriate judicial proceedings or to recover damages. However, it is hereby declared that it may be impossible to measure accurately in money the damages which will accrue to a beneficiary hereof, its transferees, successors or assigns, by reason of a violation of, or failure to perform any of the obligations provided by, this Declaration; and therefore, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

### 8.04 Collection of Assessments and Enforcement of Lien.

(a) If any assessment, interest, cost or other charge is not paid as required by this Declaration, the Association may bring either an action at law against the Owner personally obligated to pay the same, or an action to foreclose any lien created by this Declaration against the Lot or Lots subject to the lien, or both, for the purpose of collecting such assessment, cost or charge, plus any interest thereon and costs of collection, including reasonable attorneys' fees.

(b) As an additional remedy, but in no way as a limitation on the remedies, if any assessment, interest, cost or other charge is not paid as required by this Declaration, each Owner hereby grants to the Association and its assigns the following irrevocable power of attorney: To sell the said Lot or Lots

subject to lien at auction, at the usual place for conducting sales at the Courthouse in Gwinnett County, Georgia, to the highest bidder for cash, after advertising the time, terms and place of such sale once a week for four weeks immediately preceding such sale (but without regard to the number of days) in the paper in which the Sheriff's advertisements for Gwinnett County, Georgia are published, all other notice being hereby waived by each Owner, and the Association or any person on behalf of the Association, or assigns, may bid and purchase at such sale and thereupon execute and deliver to the purchaser or purchasers at such sale a conveyance of said property in fee simple, which conveyance shall contain recitals as to the happenings of the default upon which the execution of the power of sale herein granted depends, and each Owner hereby constitutes and appoints the Association and assigns, the

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agent and attorney in fact of each Owner to make such recitals, and hereby covenants and agrees that the recitals so to be made by the Association, or assigns, shall be binding and conclusive upon the Owner whose property is the subject matter of such sale, and the heirs, executors, administrators and assigns of such Owner, and that the conveyance to be made by the Association or assigns shall collect the proceeds of such sale, and after reserving therefrom the entire amount of assessment, interest, cost or other charge due, together with all costs and expenses of sale and fifteen per centum of the aggregate amount due for attorneys' fees, shall pay any excess to such Owner, or to the heirs or assigns of such Owner as provided by law. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise and are granted as cumulative to the remedies for collection of said indebtedness provided by law.

(c) WAIVER. EACH OWNER, BY ACCEPTANCE OF A DEED CONVEYING A

LOT SUBJECT TO THIS DECLARATION, WAIVES ANY RIGHT WHICH OWNER MAY HAVE UNDER THE CONSTITUTION OR THE LAWS OF THE STATE OF GEORGIA OR THE CONSTITUTION OR THE LAWS OF THE UNITED STATES OF AMERICA TO NOTICE OR TO A JUDICIAL HEARING PRIOR TO THE EXERCISE OF ANY RIGHT OR REMEDY PROVIDED BY THIS DECLARATION AND OWNER WAIVES OWNER'S RIGHTS, IF ANY, TO SET ASIDE OR INVALIDATE ANY SALE DULY CONSUMMATED IN ACCORDANCE WITH THE PROVISIONS OF THIS DECLARATION ON THE GROUNDS (IF SUCH BE THE CASE) THAT THE SALE WAS CONSUMMATED WITHOUT A PRIOR JUDICIAL HEARING. ALL WAIVERS BY OWNER IN THIS PARAGRAPH HAVE BEEN MADE VOLUNTARILY, INTELLIGENTLY AND KNOWINGLY, AFTER OWNER HAS FIRST SEEN ALLOWED THE OPPORTUNITY TO CONSULT LEGAL COUNSEL WITH RESPECT TO OWNER'S POSSIBLE RIGHTS.

8.05 No Waiver. The failure of the Declarant, the Association, or the Owner of any Lot, his or its respective legal representatives, heirs, successors and assigns, to enforce any Restrictions herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to any violation or breach occurring prior or subsequent thereto.

## ARTICLE IX

### DURATION AND AMENDMENT

#### 9.01 Duration and Perpetuities.

(a) The provisions of these covenants shall run with and bind the land and shall be and remain in effect perpetually to the extent permitted by law. Provided, however, so long as Georgia law limits to twenty (20) years, the period during which covenants restricting lands to certain uses may run, any provision & these Covenants affected thereby shall run with and bind the land for a period of twenty (20) years from the date these Covenants are filed for record in the Office of the Clerk of the Superior Court of Gwinnett County, Georgia, after which time such provision shall be automatically extended, if permitted by law, for successive periods of ten (10) years, unless an instrument, signed by at least seventy-five (75%) percent of the then Owners of record and the holders of first mortgages on their Lots has been recorded in the Office of the Clerk of said Court, agreeing to terminate or change such provisions in whole or in part. Every purchaser or grantee of any interest in any portion of the Property, by acceptance of a deed or other conveyance thereof, thereby agrees that the provisions of these Covenants may be

extended and renewed as provided in this section,

(b) If any of the covenants, conditions, restrictions easements or other provisions of these Covenants shall be unlawful, void or voidable for violation of the Rule Against Perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the survivor or the new living descendants of Her Majesty Queen Elizabeth II, the Queen of England.

9.02 Amendment. These Covenants 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 K 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 these Covenants, (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 the Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots subject to these Covenants, or (iv) if such

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amendment is necessary to enable any governmental agency, such as the Veterans Administration, or reputable private mortgage insurance company to insure mortgage loans on the Lots subject to these Covenants: provided any such amendment shall not adversely affect the title to any Owners Lot, unless any such Owner so affected thereby shall consent thereto in writing. These Covenants may be amended at any time and from time to time by an agreement signed by at least seventy-five (75%) percent of the Owners: provided, however, such amendment by the Owners shall not be effective unless also signed by the Declarant, if the Declarant is the owner of any real property subject to these Covenants: and provided further, however, no amendment affecting the Declarants right to add additional property shall be effective unless also signed by Declarant. No amendment to the provisions of these Covenants shall alter, modify, change or rescind any right, title, interest or privilege herein granted or accorded to the holder of any mortgage encumbering any Lot affected thereby unless such holder shall consent in writing thereto. Any such amendment shall not become effective until the instrument evidencing such change has been filed for record in the Office of the Clerk of the Superior Court of Gwinnett County, Georgia. The written consent thereto of any mortgage holder affected thereby shall also be filed with such amendment. Every purchaser or grantee of any interest in any real property now or hereafter subject to these Covenants, by acceptance of a deed or other conveyance therefor, thereby agrees that these Covenants may be amended as provided in this Section.

#### ARTICLE X

#### MISCELLANEOUS

10.01 Other Chances. Notwithstanding any other provisions herein which may be construed to the contrary, unless at least two-thirds (2/3) of the first mortgagees (based upon one vote for each first mortgage owned) or owners (other than the Declarant) of the individual Lots in the Development have given their prior written approval, the Association shall not be entitled to:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Property owned, directly or indirectly, by such Association (the granting of easements for public utilities or for other public purposes consistent with the intended use of such common area or property by the Association shall not be deemed a transfer within the meaning of this clause):

(b) change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner:

(c) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of dwellings on the Lots of the Development, the exterior maintenance of Lots and improvements thereon, the maintenance of the Common Property or party walks or common fences or common roadways and driveways, or the upkeep of lawns and plantings in the Development.

(d) fail to maintain fire and extended coverage on insurable Association Common Property, if any, on a current replacement cost basis in an amount not less than one hundred (100%) percent of the insurable value (based on current replacement cost):

(e) 'use hazard insurance proceeds for losses to any Association Common Property for other than the repair, replacement or reconstruction of such property.

10.02 Rights of First Mortgagees.

(a) First mortgagees of Lots in the Development may, jointly or singularly, pay taxes or other charges which are in default and which may or have become a charge against the Association's Common Property and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy, for such Common Property and first mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Despite any other provision of this Declaration which may be interpreted otherwise, it is expressly intended that no Owner or any other party have priority over any rights of the first mortgagee of a Lot pursuant to its mortgage or security deed in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Association Common Property.

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(b) In addition to the rights of mortgagees elsewhere provided, each first and mortgagee of a Lot, upon request, shall (i) be entitled to attend observe all meetings of Owners, but not meetings of the Board: (ii) be furnished copies of annual financial reports made to the Owners: and (iii) be entitled to inspect the financial books and records of the Association during reasonable business hours.

10.03 Professional Management. Any agreement for professional management of the Association, or any other contract providing for services of the Declarant, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days written notice.

10.04 Notice of Leases: Tenants and Guests. All tenants, lessees guests and visitors are subject to the covenants contained in this Declaration, and they must abide by the rules and regulations set forth herein and as promulgated by the Association. It is the responsibility of the Owner to inform his tenants, lessees, guests and visitors of this requirement. It is also the responsibility of the Owner to inform the Association of any lease of his dwelling, whether by written or oral agreement, and where the Owner will not be occupying his dwelling to provide the Association with a forwarding address where he may be contacted.

10.05 No Reverter. No restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

10.06 Severability. A determination by a court that any provision hereof is invalid for any reason shall not affect the validity of any other provision hereof.

10.07 Headings. The headings of the Articles and Sections hereof are for convenience only and shall not affect the meaning or interpretation of the contents of this Declaration.

10.08 Gender. Throughout this Declaration, the masculine gender shall be deemed to include the feminine and neuter, and the singular, the plural, and vice versa.

10.09 Notices. All amendments, notices, requests, objections, waivers, rejections, agreements, approvals, disclosures or consent of any kind made pursuant to this Declaration, whether made by the Declarant, the Association, the Owner, or any other person, shall be in writing. :All such writings shall be sufficient only if deposited in the United States Mail,

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with sufficient postage, and sent to the following addresses:

- (a) Declarant: W. 3. Enterprises, Inc.  
3280 Pointe Parkway, Suite 2400  
Norcross, Georgia 30092

- (5) Owner: Each Owners address as  
registered with the Association in accordance with the By-Laws.

Any written communication transmitted in accordance with this Section 10.09 shall be deemed received on the third (3rd) day following the day such written notice is deposited in the United States Mail,

10.10 No Liability. Declarant has, using best efforts and all due diligence, prepared and recorded this Declaration so that each and every Owner' shall have the right and the power to enforce the terms and provisions of this Declaration against every other Owner. However, in the event that this Declaration is, for any reason whatsoever, unenforceable by an Owner (or any other person) in a court of law or otherwise. Declarant shall have no liability of any kind as a result of such unenforceability, and each and every Owner, by acceptance of a deed conveying a Lot, acknowledges that Declarant shall have no such liability.

10.11 Approval by HUD/VA. Notwithstanding any provision to the contrary contained in (i) this Declaration, (ii) the Articles of Incorporation of the Association, or (iii) the By-Laws of the Association, so long as there shall be a Class B Member, the Secretary of Veterans Affairs and the Secretary of Housing and Urban Development, or their respective designees, shall have the right of prior approval of (a) dedication of Common Property, (b) the amendment of this Declaration or the Articles of Incorporation of the Association, (c) the merger, consolidation or dissolution of the Association, or (d) the conveyance or mortgaging of the Common Property.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed and sealed this 18<sup>th</sup> day of November, 1994.

Signed, sealed and delivered in  
The presence of:

W. J. ENTERPRISES. INC.

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EXHIBIT "A"

All that tract or parcel of land *lying* and being in Land Lot 322 of the 6th District, city of Duluth, Gwinnett County, Georgia, and being all of the property located within the boundaries of Unit One, Chattahoochee Landing as per plat thereof recorded in flat Book 63, page 242, Gwinnett County, Georgia records, which plat is incorporated herein and made a part hereof by reference.