

**AMENDED AND RESTATED DECLARATION OF PROTECTIVE AND RESTRICTIVE COVENANTS FOR CHATTAHOOCHEE LANDING**

1. NAME.

The name of the property is Chattahoochee Landing (hereinafter sometimes called "Chattahoochee Landing"), which is a residential property owners' development which hereby submits to the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, et seq. (Michie 1982), as may be amended.

2. DEFINITIONS.

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

(a) Act means the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, et seq. (Michie 1982), as may be amended.

(b) Architectural Control Committee or ACC means the committee established to exercise the architectural review powers set forth in Paragraph 10 hereof.

(c) Area of Common Responsibility means the Common Property, together with any areas which become the Association's responsibility under this Declaration or by contract or agreement with any other Person.

(d) Articles or Articles of Incorporation mean the Articles of Incorporation of Chattahoochee Landing Homeowners Association, Inc., filed with the Secretary of State of the State of Georgia.

(e) Association means Chattahoochee Landing Homeowners Association, Inc., a Georgia nonprofit corporation, its successors or assigns.

(f) Association Legal Instruments means this Declaration and all exhibits hereto, including the Association's Bylaws, and the plats, all as may be supplemented or amended.

(g) Board or Board of Directors means the elected body responsible for management and operation of the Association.

(h) Bylaws mean the Bylaws of Chattahoochee Landing Homeowners Association, Inc., attached to this Declaration as Exhibit "B" and incorporated herein by this reference.

(i) Common Property means any and all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners.

(j) Common Expenses mean the expenses anticipated or actually incurred by the Association in maintaining, repairing, replacing, and operating the Common Property and otherwise for the benefit of all Lots.

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

(l) Effective Date means the date that this Declaration is recorded in the Hall County, Georgia land records.

(m) Eligible Mortgage Holder means a holder of a first mortgage secured by a Lot who has requested notice of certain items under Paragraph 16(b) hereof.

(n) Lot means a portion of the Property intended for ownership and use as a single-family dwelling site as permitted in this Declaration and as shown on the plats for the Property, or

amendments or supplements thereto, recorded in the Hall County, Georgia land records.

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

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

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

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

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

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

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

(v) Property means that real estate which is submitted to the Act and the provisions of this Declaration, as described in Exhibit "A" attached hereto and incorporated herein by reference. The Property is a residential property owners development which hereby submits to the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, et seq. (Michie 1982), as may be amended.

3. LOCATION, PROPERTY DESCRIPTION, AND PLATS.

The Property subject to this Declaration and the Act is located in Hall County, Georgia, being more particularly described in Exhibit "A" attached to this Declaration, which exhibit is specifically incorporated herein by this reference. The plats of survey relating to the Property have been filed in Plat Book 67, Page 85, Hall County, Georgia records, and Plat Book 78, Page 62 Hall County, Georgia records. The plats of survey are incorporated herein by reference as fully as if same were set forth in their entirety herein.

4. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS.

(a) Membership. Every Owner shall be deemed to have a membership in the Association. This 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 (1) membership per Lot owned. In the event of multiple Owners of a Lot, votes and rights of use and enjoyment shall be as provided in this Declaration and in the Bylaws. Membership shall be appurtenant to and may not be separated from ownership of any 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 (1) vote be cast or more than one (1) office held for each Lot owned.

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

5. ALLOCATION OF LIABILITY FOR COMMON EXPENSES.

(a) Except as provided below, or elsewhere in the Act or the Association Legal Instruments, the amount of all Common Expenses shall be assessed against all the Lots equally.

(b) Notwithstanding the above, the Board of Directors shall have the power to levy the following specific assessments pursuant to this Paragraph and pursuant to Section 44-3-225(a) of the Act as, in its discretion, the Board shall deem appropriate.

(i) Except for expenses incurred for maintenance and repair of items which are the Association's maintenance responsibility hereunder, any Common Expenses benefiting less than all of the Lots or significantly disproportionately benefiting all Lots may be specially assessed equitably among all of the Lots which are benefited according to the benefit received.

(ii) Any Common Expenses occasioned by the conduct of less than all of those entitled to occupy all of the Lots or by the licensees or invitees of any such Lot or Lots may be specially assessed against such Lot(s), including attorney's fees incurred by the Association in enforcing the Declaration, Bylaws or Association rules.

#### 6. ASSOCIATION RIGHTS AND RESTRICTIONS.

The Association, acting through its Board of Directors, shall have the right and authority, but not the obligation, in addition to and not in limitation of all other rights it may have:

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

(b) to enforce use restrictions, other Declaration and Bylaws provisions, and rules and regulations by imposing reasonable monetary fines, exercising self-help powers, suspending use and voting privileges, and suspending services paid for as a Common Expense, as provided herein and in Section 44-3-223 of the Act. These powers, however, shall not limit any other legal means of enforcing such documents or provisions by either the Association or, in an appropriate case, by an aggrieved Owner;

(c) to grant permits, licenses, utility easements, and other easements, permits or licenses necessary for the proper maintenance or operation of the Property under, through or over the Common Property, as may be reasonably necessary to or desirable for the ongoing development and operation of the Property;

(d) to control, manage, operate, maintain, replace and, in the Board's discretion, alter or improve all portions of the Property for which the Association is assigned maintenance responsibility under this Declaration;

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

(f) to represent the Owners in dealing with governmental entities on matters related to the Common Property and on matters related to all of the Owners;

(g) to enter onto Lots for maintenance, emergency, security, or safety purposes, or otherwise to discharge or exercise its powers or responsibilities hereunder, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all police officers, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be only during reasonable hours and after reasonable notice to the Owner or Occupant of the Lot. For purposes hereof, any water or other utility leak, fire, strong foul odor, obvious insect infestation or sounds indicating that a person or animal might be injured or sick and require immediate medical attention shall be considered emergencies justifying immediate entry into a dwelling. No Person exercising the rights granted in this subparagraph shall be liable for trespass, damages, or in any

other manner by virtue of exercising such rights, and failure to exercise any such rights or to exercise such rights in a timely manner shall not create liability to any such Person, it being agreed that no such duty exists; and

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

#### 7. ASSESSMENTS.

(a) Purpose of Assessment. The Association shall have the power to levy assessments as provided herein and in the Act. The assessments for Common Expenses 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, as may be authorized by the Board.

(b) Creation of the Lien and Personal Obligation For Assessments. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

(i) annual assessments or charges; (ii) special assessments, to be established and collected as hereinafter provided; and (iii) specific special assessments levied by the Board hereunder against any particular Lot, including, but not limited to, reasonable fines imposed hereunder and assessments levied under Paragraph 5(b) hereunder.

All such assessments, together with charges, interest, costs, and reasonable attorney's fees actually incurred, and if the Board so elects, rents, in the maximum amount permitted under the Act, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each assessment is made. The lien provided for herein shall have priority as provided in the Act. Such amounts shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the assessment fell due. Each Owner and his or her grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance. The Association, in the Board's discretion, may, but shall not be obligated to, record a notice of such lien in the Hall County, Georgia records evidencing the lien created under the Act and this Declaration.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board. No Owner may exempt himself or herself from liability, or otherwise withhold payment of assessments, for any reason whatsoever, including, but not limited to, nonuse of the Common Property, the Association's failure to provide services or perform its obligations required hereunder, or inconvenience or discomfort arising from the Association's performance of its duties.

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

If any monthly installment of annual assessments or any part thereof is not paid in full by the tenth (10th) day of the month or if any other charge is not paid within ten (10) days of the due date, a late charge equal to the greater of ten (\$10.00) dollars or ten (10%) percent of the amount not paid, or such higher amounts as may be authorized by the Act, may be imposed without further notice or warning to the delinquent Owner, and interest at the rate of ten (10%) percent per annum, or such higher rate as permitted by the Act, shall accrue from the due date.

If the Board permits payment of the annual assessments in installments, and assessments, fines or other charges, or any part thereof, due from an Owner remain delinquent and unpaid for more than fifteen (15) days from the date due, then the Board may accelerate and declare immediately due all of that Owner's unpaid installments of the annual assessment with ten (10) days written notice.

If assessments, fines or other charges, or any part thereof, remain unpaid more than thirty (30) days after the assessment payments first become delinquent, the Association, acting through the Board, may institute suit to collect all amounts due pursuant to the provisions of the Declaration, the Bylaws, the Act and Georgia law, including reasonable attorney's fees actually incurred, and suspend the Owner's and Occupant's right to use the Common Property; provided, however, the Board may not deny ingress or egress to or from the Lot.

(d) Computation of Operating Budget and Assessment. Prior to the beginning of each fiscal year, the Board shall prepare a budget covering the estimated costs of operating the Property during the coming year, and the Board shall establish the annual assessment or installments for the coming year. The budget will be presented at the annual meeting. Anyone requesting a copy will be given one. The budget and the assessment shall become effective unless disapproved at a duly called Association meeting by a vote of a majority of the total Association membership.

If the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for the succeeding year, then, until a budget is determined as provided herein, the budget in effect for the current year shall continue for the succeeding year. However, the Board may propose a new or adjusted budget at any time during the year by causing the proposed budget and assessment to be delivered to the members at least thirty (30) days prior to the proposed effective date thereof. The budget and the assessment shall become effective unless disapproved at a duly called Association meeting by a vote of a majority of the total Association membership.

The budget shall not operate as a limitation on expenditures by the Board, but, rather, the budget is merely an estimate of Common Expenses on which the Board may base the annual assessments.

(e) Special Assessments. In addition to the annual assessment provided for herein, the Board may at any time levy a special assessment against all Owners, with notice thereof sent to all Owners. However, any special assessment which would cause the total of special assessments levied against any Lot in one calendar year to exceed two hundred (\$200.00) dollars first must be approved by at least two-thirds (2/3) of those Owners either voting by ballot or written consent under Article II, Section 8 of the Bylaws, or present or represented by proxy at a duly called special or annual meeting of the members, notice of which shall specify that purpose.

(f) Statement of Account. Any Owner, Mortgagee, or a Person having executed a contract for the purchase of a Lot, or a lender considering a loan to be secured by a Lot, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments due and unpaid, including any late charges, interest, fines, or other charges against such Lot. The Association shall respond in writing within five (5) business days of receipt of the request for a statement; provided, however, the Association may require the payment of a fee, not exceeding ten (\$10.00) dollars or such higher amount as may be authorized under the Act, as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Lot as of the date specified therein. The Association may require an additional fee not to exceed twenty five (\$25.00) dollars if the Association provides a copy of the Declaration and Bylaws to any such Person in connection with a closing or otherwise upon request.

## 8. INSURANCE.

(a) Hazard Insurance on Common Property. The Association's Board or its duly authorized agent shall have the authority to and may obtain insurance for all insurable

improvements on the Common Property now owned or hereafter acquired. This insurance may include fire and extended coverage, including coverage for vandalism and malicious mischief and should be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

(b) Association Liability and Directors' and Officers' Liability Insurance. The Board may obtain a public liability policy applicable to the Common Property now owned or hereafter acquired covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents in their capacities as such, and, if reasonably available, directors' and officers' liability insurance.

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

(d) Policy Terms. All such insurance coverage obtained by the Board shall be written in the name of the Association. Such insurance shall be governed by the provisions hereinafter set forth:

i. All policies shall be written with a company licensed to do business in Georgia.

ii. All policies on the Common Property shall be for the benefit of the Association and its members.

iii. Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

iv. In no event shall the insurance coverage obtained and maintained by the Board 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.

v. All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available and all insurance policies shall be reviewed annually by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the county where the Property is located.

vi. The Board shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

1. a waiver of subrogation by the insurer as to any claims against the Board, the Association's manager, the Owners and their respective tenants, servants, agents, and guests;

2. a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;

3. a provision that no policy may be canceled, invalidated, suspended or subjected to nonrenewal on account of any one or more individual Owners;

4. a provision that no policy may be canceled, invalidated, suspended, or subjected to nonrenewal 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 cease 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;

5. that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

6. that no policy may be canceled or substantially modified or subjected to nonrenewal without at least thirty (30) days' prior written notice to the Association.

#### 9. REPAIR AND RECONSTRUCTION.

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

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

(b) Source and Allocation of Proceeds. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair, as determined by the Board, or if at any time during the reconstruction and repair or upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, a special assessment shall be made against all of the Lot Owners without the necessity of a vote of the members or compliance with Paragraph 7(e) above. If, after repair and reconstruction is completed, there is a surplus of funds, such funds shall be common funds of the Association to be used as directed by the Board.

(c) Damage to or Destruction of Dwellings on Lots. In the event of damage to or destruction of structures on a Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Paragraph 10 of this Declaration, unless a determination not to rebuild is made by the Lot Owner in cases of substantial damage or destruction. If the structure is substantially destroyed and a determination is made not to rebuild or to reconstruct, the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction, and, thereafter, the Owner shall continue to maintain the Lot in a neat and attractive condition consistent with the Community-Wide Standard.

#### 10. ARCHITECTURAL CONTROLS.

(a) Architectural Standards. Except as provided herein, no Owner, Occupant, or any other Person may, without first obtaining written approval of the Architectural Control Committee ("ACC"),:

- (i) make any encroachment onto the Common Property,
- (ii) construct any dwelling or other improvement on a Lot,
- (iii) make any exterior change, alteration or construction on a Lot (including painting, regrading or significant landscaping modifications), or any alteration of the Lot which affects the exterior appearance of the Lot, or
- (iv) construct, erect, or place any object (including, but not limited to, gazebos, decks, patios, fences, pools, pool houses, and playground equipment) on the exterior of the Lot, on the dwelling on the Lot or on any Common Property.

The standard for approval of such improvements shall include, but not be limited to: (1) aesthetic consideration, (2) materials to be used, (3) compliance with the Community-Wide Standard, this Declaration, or the design standards which may be

adopted by the Board (4) harmony with the external design of the existing buildings, Lots and structures, and the location in relation to surrounding structures and topography, and (5) any other matter deemed to be relevant or appropriate by the Board or ACC.

Applications for approval of any such architectural modification shall be in writing and shall provide such information as the ACC may reasonably require. The ACC or its designated representative shall be the sole arbiter of such application and may withhold approval for any reason, including purely aesthetic considerations, and the Association, acting through the Board, shall be entitled to stop any construction which is not in conformance with approved plans.

If the ACC or its designated representative fails to approve or to disapprove such application within thirty (30) days after the application and such information as the ACC may reasonably require shall have been submitted, its approval will not be required and this subparagraph will be deemed complied with, unless such structure or improvement otherwise is in violation of the Declaration, the Bylaws, the design standards, the Association's rules and regulations, or applicable zoning ordinances.

(b) Architectural Control Committee. The Architectural Control Committee shall constitute a standing committee of the Association. The Board will appoint members of the association to serve on the ACC. At all times, however, the chairperson of the ACC shall be a Board member.

(c) Appeal. In the event that the ACC or its designated representative disapproves any application or part thereof, an Owner shall have the right to appeal the ACC's decision to the Board of Directors. The Board shall rule on the appeal within thirty (30) days of receiving written notice requesting an appeal from the Owner. In ruling on the appeal, the Board shall consider all relevant materials presented to it by either the Owner or the ACC, the decision of the ACC, and the application of the Owner to the ACC. The Board of Directors shall have the final authority to approve, disapprove, or conditionally approve or disapprove the application of the Owner. If the Board does not receive written notice from the Owner requesting an appeal within fourteen (14) days from the date of the ACC's notice to the Owner of its decision, the decision of the ACC shall become final and all rights of appeal shall terminate and thereafter be void.

(d) Design Standards. The Board may publish written design standards for exterior alterations and additions; provided, however, the following:

- (i) no structure other than a mailbox may be constructed, erected, or placed between the street located at the front of a Lot and the front lot line of the Lot;
- (ii) mailboxes shall be uniform in design and construction;
- (iii) no gate, column, wall, or fence may be constructed, erected, or placed along the front lot line of a Lot, but must instead be constructed, erected, or placed no closer to the street located at the front of a Lot than the front of the dwelling located on the Lot;
- (iv) chain link fences may only be constructed, erected, or placed along the rear lot line of a Lot and shall be screened with trees or shrubbery;
- (v) playground equipment may only be constructed, erected, or placed behind the rear of a dwelling; and
- (vi) driveways leading from the street to a dwelling shall be paved.

(e) Limitation of Liability. Review and approval of any application pursuant to this Paragraph may be made on any basis, including solely the basis of aesthetic considerations, and neither the Board nor the ACC shall bear any responsibility for ensuring the design, quality, structural integrity or soundness of approved

construction or modifications, nor for ensuring compliance with building codes, zoning regulations and other governmental requirements. Neither the Association, the Board, the ACC, or member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner, design or quality of approved construction or modifications to any Lot, nor may any action be brought against the Association, the Board, the ACC, or any member thereof, for any such injury, damage or loss.

(f) No Waiver of Future Approvals. Each Owner acknowledges that the members of the Board and the ACC will change from time to time and that interpretation, application and enforcement of the design standards may vary accordingly. The approval of either the Board or the ACC of any proposals, plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval of the Board or the ACC, shall not constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

(g) Enforcement. Any construction, alteration or other work done in violation of this Paragraph, the Declaration, the Bylaws, the design standards or any applicable zoning regulations shall be deemed to be nonconforming. Upon written request from the Board, a violating Owner shall, at his or her own cost and expense, remove such nonconforming construction, alteration or other work and restore the property to substantially the same condition as existed prior to such construction, alteration or work. Should the Owner fail to do so, the Board or its designees shall have the right, in addition to all other available remedies, to enter the property, remove the violation and restore the property, or obtain a court order compelling the violating Owner to do so. All costs thereof, including reasonable attorney's fees, may be assessed against such Lot.

In addition to the above, the Board shall have the authority and standing, on behalf of the Association, to impose reasonable fines and to pursue all legal and equitable remedies available to enforce the provisions of this Paragraph and its decisions or those of the ACC. All costs of any such action, including reasonable attorney's fees, may be assessed against such Lot. Furthermore, the Board shall have the authority to record in the Hall County land records notices of violation of the provisions of this Paragraph.

(h) Commencement and Completion of Construction. All improvements approved by the ACC hereunder must be commenced within one year from the date of approval. If not commenced within such time, then such approval shall be deemed revoked by the ACC, unless the ACC gives a written extension for commencing the work. Additionally, except with written ACC approval otherwise, and except for delays caused by strikes, fires, national emergencies, critical materials shortages or other intervening forces beyond the control of the Owner, all work approved by the ACC hereunder shall be completed within 90 days of commencement.

## 11. USE RESTRICTIONS

Each Owner of a Lot shall be responsible for ensuring that the Owner, the Owner's family, guests, tenants and Occupants comply with all provisions of this Declaration, the Bylaws and the rules and regulations of the Association. Furthermore, each Owner and Occupant shall always endeavor to observe and promote the cooperative purposes for which the Association was established. In addition to any rights the Association may have against the Owner's family, guests, tenants or Occupants, the Association may take action under this Declaration against the Owner as if the Owner committed the violation in conjunction with the Owner's family, guests, tenants or Occupants.

Use restrictions regarding use of Lots and the Common Property are as follows and also as may be adopted by the Board in accordance with the terms hereof and as specified in the Bylaws:

(a) Building Restriction. All of the Lots shall be known, described and used solely as residential lots, and no structure shall be erected on any lots other than one detached, single-family dwelling, which shall not exceed two stories in height above ground. Construction of a detached garage and any other structure, such as a gazebo or pool cabana, on a Lot shall be permitted if first approved by the Architectural Control Committee.

(b) Size of Dwellings.

(i) No dwelling shall be erected on Lots 18, 47, 48, 49, 50, 51 or 52 where the ground area thereof shall be less than 1,500 square feet in the case of a one-story structure.

(ii) No dwelling shall be erected on Lots 1, 2, 3, 4, 5, 6, 7, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 41, 44, 45, 46, 53, 54, 55, 62, 63, 64, 65, 66, 67, 68, 69, 70, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 95, 97, 98, 99, 100, 101, 102 or 103 where the ground area thereof shall be less than 1,600 square feet in the case of a one-story structure.

(iii) No dwelling shall be erected on Lots 8, 9, 10, 11, 12, 13, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 42, 43, 56, 57, 58, 59, 60, 61, 71, 72, 73, 75, 76, 87, 88, 89, 90, 94 or 96 where the ground area thereof shall be less than 1,800 square feet in the case of a one-story structure.

(iv) No dwelling shall be erected on Lots 91, 92, or 93 where the ground area thereof shall be less than 2,000 square feet in the case of a one-story structure.

(v) In the case of a two-story structure, no dwelling shall be erected on a Lot where the ground area thereof shall be less than 1,000 square feet and where the total square footage of all stories shall be less than the minimum one-story requirement for said Lot.

(vi) In the case of a split-level structure, no dwelling shall be erected on a Lot where the finished and heated living area shall be less than the minimum one-story requirement for said Lot.

(vii) In the case of a split-foyer structure, no dwelling shall be erected on a Lot where the lower level shall be less than 1,000 square feet and where the total square footage of finished and heated living area of all levels shall be less than the minimum one-story requirement for said Lot.

(viii) In the case of a one-story structure with a finished basement, no dwelling shall be erected on a Lot where the main floor shall be less than 1,300 square feet and where the total square footage of finished and heated living area shall be less than the minimum one-story requirement for said Lot.

(ix) These minimum requirements of square footage area shall be exclusive of porches, carports, patios, outside storage rooms and similar items of construction.

(c) Building Locations. All buildings shall be constructed, erected and placed within the building setback lines as shown on the plats of survey relating to the Property dated July 8, 1977 and recorded in Plat Book 67, Page 85, Hall County, Georgia records, and dated March 28, 1980 and recorded in Plat Book 78, Page 62 Hall County, Georgia records, except that the setback line for Lot 95 (also known as 2453 Basin Court) is decreased to a minimum of twenty eight feet.

(d) Residential Use Restriction. Each Lot shall be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Lot, except that the Owner or Occupant residing in a dwelling on a Lot may conduct such ancillary business activities within the dwelling so long as:

(i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside of the dwelling;

(ii) the business activity does not involve visitation of the dwelling by employees, clients, customers, suppliers or other business invitees in greater volume than would normally be expected for guest visitation to a residential dwelling without business activity;

(iii) the business activity conforms to all zoning requirements for the Property;

(iv) the business activity does not increase traffic in the Property in excess of what would normally be expected for residential dwellings in the Property without business activity (other than by deliveries by couriers, express mail carriers, parcel delivery services and other such similar delivery services);

(v) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the Association's ability to obtain insurance coverage;

(vi) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as determined in Board's discretion; and

(vii) the business activity does not result in a materially greater use of common area facilities or Association services.

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) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the use of a Lot by an on-site management company operating on behalf of the Association shall not be considered a trade or business within the meaning of this subparagraph.

Neither a temporary nor permanent residence shall be established on any Lot in a trailer, mobile home, basement, tent, shack, garage, barn or any other outbuilding. No residence of a temporary character shall be permitted.

(e) Subdivision of Lots. No Lot may be subdivided into a building plot of lesser size than the original Lot, except that part of a Lot may be sold to the owner of an adjoining Lot, in which event, the part of the Lot sold shall thereafter be considered a part of such adjoining Lot.

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

(g) Parking. Vehicles only may be parked in garages, driveways, or other areas authorized in writing by the Board.

Disabled and stored vehicles are prohibited from being parked on the Property, except in garages. For purposes of this subparagraph, a vehicle shall be considered "disabled" if it does

not have a current license tag or is obviously inoperable. A vehicle shall be considered "stored" if it remains on the Property, other than in a garage, for fourteen (14) consecutive days or longer without prior written Board permission.

Boats, trailers, campers, and recreational vehicles (RV's and motor homes) shall be parked or stored in a location so as not to be visible from the street.

(h) Signs. Except as may be required by legal proceedings, no signs, advertising posters or billboards of any kind shall be erected, placed, or permitted to remain on the Property without the prior written consent of the Board or its designee, except that two (2) professional security signs not to exceed twelve (12") inches by twelve (12") inches each in size may be displayed from within a dwelling on a Lot and one (1) professionally lettered "For Rent" or "For Sale" sign not to exceed two (2') feet by two (2') feet in size may be displayed from within a dwelling on a Lot being offered for sale or for lease. The Board shall have the right to erect reasonable and appropriate signs on behalf of the Association. The Board also shall have the authority to adopt regulations permitting temporary signs on Lots announcing open houses, births, birthdays or other events for limited periods of time.

(i) Rubbish, Trash, Garbage, and Building Materials. All rubbish, trash, garbage, and discarded building materials (including cinder blocks and lumber) shall be regularly removed from the Lot and shall not be allowed to accumulate therein. Rubbish, trash, and garbage shall be placed in garbage containers. Garbage containers shall be placed or stored in a location so as not to be visible from the street; provided, however, that garbage containers may be placed at the street on the designated day for pick-up.

(j) Unightly or Unkempt Conditions. The pursuit of hobbies or other activities, including, but not limited to the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Property, except within a dwelling. Appliances, indoor furniture, and other household items shall not be stored outside the dwelling. Only appropriate outdoor items, such as neatly stacked firewood, patio furniture, grills, and similar items may be kept outside of a dwelling.

(k) Clotheslines. Clotheslines shall be placed in a location so as not to be visible from the street.

(l) Antennas and Satellite Dishes. No transmission antenna, of any kind, may be erected anywhere on the Property without written approval of the Board of Directors or the Architectural Control Committee. No direct broadcast satellite (DBS) antenna or multi-channel multi-point distribution service (MMDS) larger than one meter in diameter shall be placed, allowed, or maintained upon any portion of the Property, including a Lot. DBS and MMDS antennas one meter or less in diameter and television broadcast service antennas may only be installed in accordance with Federal Communication Commission (FCC) rules and the rules and regulations of the Association authorized by the FCC, both as may be amended from time to time. Such items shall be installed in the least conspicuous location available on the Lot which permits reception of an acceptable signal. The Board may, but shall not be required to, publish rules and regulations for the installation of antennas and satellite dishes to ensure this provision is in compliance with FCC rules and regulations.

## 12. LEASING.

(a) Definition. "Leasing," for purposes of this Declaration, is defined as regular, exclusive occupancy of a Lot by any person or persons other than the Owner; provided, however, for purposes of this Declaration, leasing shall not include exclusive occupancy by

the child or parent of an Owner. For purposes hereof, occupancy by a roommate of an Owner who occupies the Lot as such Owner's primary residence shall not constitute leasing hereunder.

(b) Leasing of Lots shall be governed by the following provisions:

(i) General. Lots may be leased only in their entirety; no fraction or portion may be leased without prior written Board approval. All leases shall be in writing. All leases must be for an initial term of not less than six (6) months, except with written Board approval. Within seven (7) days after executing a lease agreement for the lease of a Lot, the Lot Owner shall provide the Board with a copy of the lease and the name of the lessee and the names of all other people to occupy the Lot. The Lot Owner must provide the lessee copies of the Declaration, Bylaws, and the rules and regulations.

(ii) Compliance With Declaration, Bylaws, and Rules and Regulations, Use of Common Property, and Liability for Assessments. Any lease of a Lot shall be deemed to contain the following provisions, whether or not expressly therein stated, and each Owner and each lessee, by occupancy of a Lot, covenants and agrees that any lease of a Lot shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant on the Lot:

(1) Compliance With Declaration, Bylaws, and Rules and Regulations. The lessee shall comply with all provisions of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto and shall control the conduct of all other Occupants and guests of the leased Lot in order to ensure compliance with the foregoing. The Owner shall cause all Occupants of his or her Lot to comply with the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations by such Occupants, notwithstanding the fact that such Occupants of the Lot are fully liable and may be sanctioned for any violation of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto. If the lessee, or a person living with the lessee, violates the Declaration, Bylaws, or a rule or regulation for which a fine is imposed, such fine may be assessed against the lessee and/or the Owner. If a fine is not paid by the lessee within the time period set by the Board, the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Lot. Any lessee charged with a violation of the Declaration, Bylaws, or Association rules and regulations is entitled to the same procedure to which an Owner is entitled prior to the imposition of a fine or other sanction.

Any violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto by the lessee, any Occupant, or any person living with the lessee, is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with Georgia law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof, or to require the Owner to do so. If the Association proceeds to evict the lessee, any costs, including attorney's fees and court costs, associated with the eviction shall be specifically assessed against the Lot and the Owner thereof, such being deemed hereby as an expense which benefits the leased Lot and the Owner thereof.

(2) Liability for Assessments. When a Lot Owner who is leasing his or her Lot fails to pay any annual or special

assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board, lessee shall pay to the Association all unpaid annual and special assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by lessee. However, lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If lessee fails to comply with the Board's request to pay assessments or other charges, lessee shall pay to the Association all amounts authorized under Paragraph 7 herein as if lessee were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

(c) Applicability of this Paragraph 12. Leases existing on the Effective Date hereof shall not be subject to the terms of subparagraph (b) above. However, any assignment, extension, renewal, or modification of any lease agreement, including, but not limited to, changes in the terms or duration of occupancy, shall be considered a termination of the old lease and commencement of a new lease which must comply with this Paragraph. Any Owner of a Lot which is leased on the date this Declaration is recorded in the Hall County land records shall place on file with the Board of Directors a copy of the lease agreement in effect within thirty (30) days of the date on which this Declaration is recorded in the Hall County, Georgia land records.

### 13. SALE OF LOTS.

A Lot Owner intending to make a transfer or sale of a Lot or any interest in a Lot shall give the Board written notice of such intention within seven (7) days after execution of the Purchase and Sale Agreement or other transfer or sales documents. The Owner shall furnish the Board, as part of the notice, the name and address of the intended grantee and such other information as the Board may reasonably require. This Paragraph shall not be construed to create a right of first refusal in the Association or in any third party.

Within seven (7) days after receiving title to a Lot, the purchaser of the Lot shall give the Board written notice of his or her ownership of the Lot. Upon failure of a Owner to give the required notice within the seven-day time period provided herein, the Board may levy fines against the Lot and Owner thereof, and assess the Owner for all costs incurred by the Association in determining his or her identity.

### 14. MAINTENANCE RESPONSIBILITY.

(a) Association's Responsibility. The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair, and replacement subject to any insurance then in effect, of all landscaping grass areas, paving and other improvements situated on the Common Property. The Association shall also maintain and keep in good repair all water and sewer pipes or facilities which serve the Common Property, to the extent that such pipes and facilities are not maintained by public, private, or municipal utility companies.

The foregoing maintenance shall be performed consistent with the Community-Wide Standard. The Association shall have the right, but not the obligation, to maintain public rights of way adjacent to the Property and other property not owned by the Association if the Board determines that such maintenance would benefit the Property.

(b) Owner's Responsibility. Each Owner shall maintain and keep his or her Lot and dwelling in good repair, condition and order, including, but not limited to, mowing, edging, trimming and keeping planting beds in good condition. In addition, each Owner shall maintain any public right of way located between the Owner's Lot and the curb of the street(s) bordering such Lot. Such maintenance shall be performed consistent with this Declaration and the Community-Wide Standard established pursuant hereto. Each Owner shall perform his or her responsibility hereunder in such manner so as not to unreasonably disturb other Lot Owners. In addition, upon the completion of the construction on a Lot, the Owner shall complete all landscaping on the Lot.

If the Board determines that any Owner has failed or refused to discharge properly his or her obligation with regard to the maintenance of the Owner's Lot or the repair or replacement of items of which he or she is responsible hereunder, then, the Association shall give the Owner written notice of the Owner's failure or refusal and of the Association's right to provide necessary maintenance, repair, or replacement at the Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board.

Unless the Board determines that an emergency exists, the Owner shall have ten (10) days within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten (10) days. If the Board determines that: (i) an emergency exists or (ii) that an Owner has not complied with the demand given by the Association as herein provided; then the Association may provide any such maintenance, repair, or replacement at the Owner's sole cost and expense, and such costs shall be an assessment and lien against the Owner and the Lot. If, during the course of performing its maintenance responsibilities hereunder, the Association discovers that maintenance, repair or replacement is required of an item which is the Owner's responsibility, and such maintenance, repair or replacement must be performed for the Association to properly complete its maintenance project, then the Association may perform such work on behalf of the Owner and at the Owner's expense, without prior notice to the Owner, such being deemed an emergency situation hereunder.

The Board may alternatively enforce this Paragraph through monetary fines against the Owner or Occupant of the Lot, and each day the maintenance, repair, or replacement is not completed shall constitute a separate violation for which fines may be assessed on a daily basis.

#### 15. PARTY WALLS AND FENCES.

(a) General Rules of Law to Apply. Each wall or fence built as a part of the original construction of the dwellings or Lots which shall serve and separate any two (2) adjoining Lots or dwellings shall constitute a party wall or fence and, to the extent not inconsistent with the provisions of this Paragraph, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall or fence shall be shared by the Owners who make use of the wall or fence in equal proportions.

(c) Damage and Destruction. If a party wall or fence is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has benefited by the wall or fence may restore it, and the other Owner or Owners thereafter who are benefited by the wall or fence shall contribute to

the cost of restoration thereof in equal proportions, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Paragraph shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

(e) Arbitration. In the event of any dispute arising concerning a party wall or fence, or under the provisions of this Paragraph, each party shall appoint one (1) arbitrator. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor by the Board, the Board shall appoint an arbitrator for the refusing party. The arbitrators thus appointed shall appoint one (1) additional arbitrator and the decision by a majority of all three (3) arbitrators shall be binding upon the parties. Compliance with this subparagraph shall be a condition precedent to any right of legal action that either party may have against the other in a dispute arising under the provisions of this Paragraph.

#### 16. MORTGAGEE'S RIGHTS.

(a) Unless at least two-thirds (2/3) of the first Mortgagees or Lot Owners give their consent, the Association shall not:

(i) by act or omission seek to abandon or terminate the Property or the Association;

(ii) change the pro rata interest or obligations of any individual Lot for the purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards;

(iii) partition or subdivide any Lot;

(iv) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Property (the granting of utility easements or rights-of-way for public purposes and the granting other easements for the benefit of the Association shall not be deemed a transfer within the meaning of this clause); or

(v) use hazard insurance proceeds for losses to any portion of the Property (whether to Lots or to Common Property) for other than the repair, replacement, or reconstruction of such portion of the Property. Option: use hazard insurance proceeds for losses to the Common Property for other than the repair, replacement, or reconstruction of the Common Property.

The provisions of this subparagraph shall not be construed to reduce the percentage vote that must be obtained from Mortgagees or Lot Owners where a larger percentage vote is otherwise required by the Association Legal Instruments for any of the actions contained in this Paragraph.

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

(b) Upon written request to the Association, identifying the name and address of the holder and the Lot number or address, any Eligible Mortgage Holder will be entitled to timely written notice of:

(i) any condemnation loss or any casualty loss which affects a material portion of the Property or any Lot on which there is a first Mortgage held by such Eligible Mortgage Holder;

(ii) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to a first Mortgage held by such Eligible Mortgage Holder which remains unsatisfied for a period of sixty (60) days, and any default in the performance by an individual Lot Owner of any other obligation under the Association Legal Instruments which is not cured within sixty (60) days;

(iii) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or

(iv) any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders, as specified herein.

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

Notwithstanding anything to the contrary herein contained, the provisions of Paragraphs 12 and 13 governing sales and leases shall not apply to impair the right of any first Mortgagee to: (i) foreclose or take title to a Lot pursuant to remedies contained in its Mortgage; (ii) take a deed or assignment in lieu of foreclosure; or (iii) sell, lease, or otherwise dispose of a Lot acquired by the Mortgagee.

## 17. GENERAL PROVISIONS.

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

The Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

(b) Dispute Resolution. Any Lot Owner or Occupant must give written notice to the Board requesting a hearing with the Board and attend such hearing to discuss amicable resolution of any dispute before that Owner or Occupant files any lawsuit against the Association, the Board, any officer or director, or the property manager of the Association. The Owner or Occupant shall, in such notice and at the hearing, make a good faith effort to explain the grievance to the Board and resolve the dispute in an amicable fashion, and shall give the Board a reasonable opportunity to address the Owner's or Occupant's grievance before filing suit. Upon receiving a request for a hearing, the Board shall give notice of the date, time and place of the hearing to the person requesting the hearing. The Board shall schedule this hearing for a date not less than seven (7) nor more than twenty-one (21) days from the date of receipt of the notice of hearing from the person requesting the hearing.

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

(d) Indemnification. The Association may indemnify every officer and director against any and all expenses, including, without limitation, attorney's fees, imposed upon or reasonably incurred by any officer or director 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 or director may be a party by reason of being or

having been an officer or director. The officers and directors 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 and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association), and the Association shall indemnify and forever hold each such officer and director 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 or director, or former officer or director, 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.

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

(f) Rule Making. The Property shall be used only for those uses and purposes set out in the Declaration. The Board of Directors shall have the authority to make, modify, repeal and enforce reasonable rules and regulations governing the conduct, use, and enjoyment of Lots and the Common Property; provided, copies of all such rules and regulations shall be furnished to all Owners and Occupants. Any rule or regulation may be repealed by the affirmative vote or written consent of a Majority of the total Association vote at an annual or special meeting of the membership.

(g) Enforcement. In addition to the enforcement provisions set forth within this Declaration, the Board shall have the authority and standing, on behalf of the Association, to pursue all legal and equitable remedies in a court of competent jurisdiction to enforce the Declaration, Bylaws and rules and regulations of the Association. All costs of any such action, including reasonable attorney's fees actually incurred, may be assessed against any such violator.

The Board shall also have the power to impose reasonable fines, which shall constitute a lien upon the Owner's Lot, and to suspend an Owner's right to vote or to use the Common Property for violation of any duty imposed under the Declaration, Bylaws, or any Association rules or regulations; provided, however, nothing herein shall authorize the Association or the Board to deny ingress and egress to or from a Lot.

(i) Fining and Suspension Procedure. The Board shall not impose a fine or suspend the right to vote or to use the Common Property, unless and until the Association has sent or delivered written notice to the violator as provided in subsection (ii) below. However, compliance with this subsection shall not be required for late charges on delinquent assessments, or suspension of voting rights if an Owner is shown on the Association's records to be more than thirty (30) days delinquent in any payment due the Association, in which case suspension of the right to vote shall be automatic.

(ii) Notice. If any provision of the Declaration, Bylaws or any Association rule or regulation is violated, the Board shall send the violator written notice identifying the violation and fine(s) and/or suspension(s) being imposed and advising the violator of the right to request a hearing before the Board to contest the violation or the fine(s) and/or suspension(s) or to request reconsideration of the fine(s) and/or suspensions. Fines and suspensions may be effective or commence upon the sending of such notice or such later date specified in such notice,

notwithstanding the violator's right to request a hearing before the Board to challenge the fine(s) and/or suspension(s). In the event of a continuing violation, each day the violation continues or occurs again constitutes a separate offense, and fines may be imposed on a per diem basis without further notice to the violator.

(iii) Hearing. If a written request for hearing is received from the violator within ten (10) days of the date of the violation notice provided above, then the Board shall schedule and hold in executive session a hearing affording the violator a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing. The Board may establish rules of conduct for such hearing, which may include limits on time and on the number of participants who may be present at one time. Failure to request a timely hearing as provided herein shall result in loss of the right to challenge and request reconsideration of the fines.

Notwithstanding anything to the contrary herein contained, the Association, acting through the Board, may elect to enforce any provision of the Declaration, the Bylaws, or the rules and regulations by self-help. The Association or its duly authorized agent shall have the power to enter a Lot or upon any portion of the Common Property to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates the Declaration, the Bylaws, or the rules and regulations. All costs of self-help or of otherwise enforcing the Declaration, Bylaws or Association rules or regulations, including reasonable attorney's fees, shall be assessed against the violating Lot Owner. Additionally, the Association shall have the authority to record in the Hall County land records a notice of violation identifying an uncured violation of the Declaration, Bylaws or rules and regulations regarding the Lot.

#### 18. EMINENT DOMAIN.

Whenever all or any part of the Common Property shall be taken or conveyed in lieu of or under threat of condemnation by any authority having power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. If the taking involves a portion of the Common Property on which improvements have been constructed, then, unless within sixty (60) days after such taking at least seventy-five (75%) percent of the Owners shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Property to the extent lands are available therefor.

#### 19. EASEMENTS.

(a) 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 his or her 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 guests of Lot Owners and tenants who may use the Common Property, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, his or her family, tenants, guests, and invitees;

(ii) the right of the Association to suspend the voting rights of an Owner and the right of an Owner to use the recreational facilities in the Property for any period during which any assessment against his or her Lot which is provided for herein 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 as may be set forth in the Bylaws; provided, however, the lien and

encumbrance of any such mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, encumbering any Lot or other property located within the Property (Any provision in this Declaration or in any such Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, encumbering any Lot or other property located within the Property.);

(iv) the right of the Association to grant permits, licenses or easements across the Common Property, as authorized in this Declaration or the Bylaws; and

(v) the right of the Association to dedicate or transfer all or any portion of the Common Property subject to such conditions as may be agreed to by the members of the Association.

Any Lot Owner may delegate his or her right of use and enjoyment in and to the Common Property and facilities located thereon to the members of his or her family, his or her tenants and guests, and shall be deemed to have made a delegation of all such rights to the Occupants of his or her Lot, if leased.

(b) Easements for Utilities. There is hereby reserved to the Association blanket easements upon, across, above and under all property within the Property for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Property 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 Association may have installed to serve the Property. It shall be expressly permissible for the Association or its designee, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, cables and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Board shall have the right to grant such easement.

(c) Easement for Entry. The Association shall have an easement to enter onto any Lot for emergency, security, safety, and for other purposes reasonably necessary for the proper maintenance and operation of the Property, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all police officers, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be only during reasonable hours and after notice to the Owner or Occupant. This right of entry shall include the right of the Association to enter a Lot to cure any condition which may increase the possibility of a fire or other hazard in the event that an Owner fails or refuses to cure the condition upon request by the Board.

#### 20. AMENDMENTS.

Except where a higher vote is required for action under any other provisions of this Declaration, in which case such higher vote shall be necessary to amend such provision, this Declaration may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the members of the Association holding sixty-six and two-thirds (66-2/3%) percent of the total eligible vote thereof. Notice of a meeting, if any, at which a proposed amendment will be considered shall state the fact of consideration and the subject

matter of the proposed amendment. No amendment shall be effective until certified by the President and Secretary of the Association and filed in the Hall County, Georgia land records.

Notwithstanding the foregoing, the Board of Directors, without the necessity of a vote from the owners, may amend this Declaration to comply with the Act, any applicable state, city or federal law, including but not limited to, compliance with applicable guidelines of the Federal National Mortgage Association ("Fannie Mae"), the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA").

If legal action is not instituted to challenge the validity of this Declaration or any amendment hereto within one (1) year of the recording thereof in the Hall County, Georgia land records, then such amendment or document shall be presumed to be validly adopted.

21. SEVERABILITY.

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

22. DURATION.

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

23. PREPARER.

This Declaration was prepared by John T. Lueder, Weissman, Nowack, Curry & Wilco, P.C., One Alliance Center, 4<sup>th</sup> Floor, 3500 Lenox Road, Atlanta, Georgia 30326.

IN WITNESS WHEREOF, this Amended and Restated Declaration of Protective and Restrictive Covenants for Chattahoochee Landing ("Declaration") was properly presented to the Owners and was approved by at least a majority of the Owners within Chattahoochee Landing, Section One, and approved by at least a majority of the Owners within Chattahoochee Landing, Section Two, as evidenced by the attached consents that have been signed and incorporated into Declaration to create one instrument.