

Each Owner further covenants and agrees that in the event of damage to or destruction of structures situated on the Owner's 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 Article IX of this Declaration. Alternatively, the Owner shall clear the Lot of all debris and ruins and thereafter shall maintain the Lot in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs of repair or reconstruction that are not covered by insurance proceeds.

Section 3. Damage and Destruction.

(a) Immediately after damage or destruction by fire or other peril to all or any part of the properties covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the same condition in which it existed prior to the fire or other peril, allowing for any changes or improvements necessitated by changes in applicable building codes.

(b) Any damage to or destruction of the Common Property shall be repaired or reconstructed unless at least eighty percent (80%) of the Total Association Vote decide within sixty (60) days after the loss not to repair or reconstruct.

If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such funds or information shall be made available. However, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Property shall be repaired or reconstructed.

If it is determined in the manner described above that the damage or destruction to the Common Property shall not be repaired or reconstructed and no alternative improvements are authorized, the affected portion of the properties shall be cleared of all debris and ruins. Thereafter the Properties shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Section 4. Disbursement of Proceeds. Any insurance proceeds remaining after defraying such costs of repair or reconstruction, or if no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate with the affected Owner or Owners and their Mortgagee(s) as their interests may appear, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of any Mortgagee of a Lot and may be enforced by such Mortgagee.

Section 5. Repair and Reconstruction. If the insurance proceeds are insufficient to defray the costs of repairing or reconstructing the damage to the Common Property, the Board of Directors shall, without the necessity of a vote of the members, levy a special assessment against the Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

Article XI
Mortgagee Provisions

The following provisions are for the benefit of holders of first Mortgages on Lots in the Community. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

Section 1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number, therefore becoming an "eligible holder"), will be entitled to timely written notice of any:

(a) condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;

(b) delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by the Owner of the encumbered Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days;

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

(d) proposed action that would require the consent of a specified percentage of Mortgage holders.

Section 2. No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of any Common Property.

Section 3. Notice to Association. Upon request, each Lot Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

Section 4. Applicability of Article XI. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or Georgia law for any of the acts set out in this Article.

Section 5. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

Section 6. Liability for Common Expenses. Where the Mortgagee holding a first Mortgage of record or other purchaser of a Lot obtains title pursuant to judicial or non-judicial 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.

Section 7. Financial Statement. 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.

Section 8. Sales and Leases. Notwithstanding anything to the contrary herein contained, the provisions of this Declaration shall not apply to impair the right of any first Mortgagee to: (a) foreclose or take title to a Lot pursuant to remedies contained in its Mortgage; (b) take a deed or assignment in lieu of foreclosure; or (c) sell, lease, or otherwise dispose of a Lot acquired by the Mortgagee.

Article XII **Easements**

Section 1. Easements for Encroachment and Overhang. There shall be reciprocal appurtenant easements for encroachment and overhang as between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered (in accordance with the terms of this Declaration). The easement shall be five (5) feet, as measured from any point on the common boundary adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point. However, an easement for encroachment shall not exist if the willful conduct by an Owner, tenants, or the Association caused the encroachment.

Section 2. Easements for Use and Enjoyment.

(a) Except as otherwise provided herein, every Owner of a Lot shall have a right and easement of entry and exit, use and enjoyment in and to the Area of Common Responsibility, 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 suspend the voting rights of an Owner and the right of an Owner to use the recreational facilities available for use by the Community, if any, for any period during which any assessment against his or her Lot that is hereby provided for remains unpaid; and, for a reasonable period of time for a violation of the Declaration, Bylaws, or rules and regulations;

(ii) The right of the Association to borrow money for the purpose of improving the Area of Common Responsibility, or for constructing, repairing, or improving any facilities located or to be located on the Area of Common Responsibility, and to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Area of Common Responsibility. However, the Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges reserved or established for the benefit of Declarant, any Lot or Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Lot or other property located within the Community (Any provision in this Declaration or in any Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights in the Mortgage by the holder of the Mortgage in the event of a default shall not cancel or terminate any rights, easements or privileges reserved or established in this Declaration for the benefit of Declarant, any Lot or Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Lot or other property located within the Community.);

(iii) The right of the Association to dedicate or transfer all or any portion of the Area of Common Responsibility subject to any conditions agreed on by the members of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by Declarant (so long as Declarant owns any property for development and/or sale within the Community) and the Owners representing at least two-thirds (2/3) of the Total Association Vote (other than Declarant so long as the consent of Declarant is required);

(iv) The right of the Association, acting through its Board of Directors, and without a vote of the Members, to dedicate or grant licenses, permits, easements and rights-of-way over, under and through the Area of Common Responsibility;

(v) All other rights of the Association, Declarant, Owners and Occupants set forth in this Declaration or in any deed conveying Area of Common Responsibility to the Association; and

(vi) All encumbrances and other matters shown by the public records affecting title to the Area of Common Responsibility.

(b) Any Owner may delegate his or her right of use and enjoyment in and to the Area of Common Responsibility and facilities located thereon to the members of his or her family and his or her tenants and guests. An Owner shall be deemed to have made a delegation of all these rights to the Occupants of such Owner's Lot, if leased.

Section 3. Easements for Utilities. There is reserved to Declarant and the Association blanket easements upon, across, above and under all property within the Community for access, ingress, egress, installation, repairing, replacing, and maintaining (a) all utilities serving the Community, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, (b) water runoff and storm drainage systems, and (c) any other services such as, but not limited to, a master television antenna system, or cable television system which may be installed to serve the Community (hereinafter collectively referred to as the "Utilities"). It shall be expressly permissible for Declarant, the Association, or the designee of either, to do or to authorize the installation, repair, replacement and/or maintenance of the wires, conduits, cables and other equipment related to providing any such utility or service. Should a party furnishing any such utility or service request a specific license or easement by separate recordable document, Declarant or the Board, as applicable, shall have the right to grant such easement.

Section 4. Easement for Entry. In addition to the right of the Board to exercise self-help as provided in Article XV, Section 2, the Board shall have the right, but not the obligation, to enter upon any property within the Community for emergency, security, and safety reasons. This right may also be exercised by the agents of the Association, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. The Board shall have the right, but not the obligation, to enter to cure any condition, which may increase the possibility of slope erosion, or other hazard if an Owner or Occupant does not cure the condition after request by the Board.

Section 5. Easement for Association Maintenance. Declarant expressly reserves a perpetual easement for the benefit of the Association across such portions of the Community, determined in the sole discretion of the Association, as are necessary to allow for the maintenance required under Article V, including, without limitation, an easement over Lots on which landscape easements, sign easements or utilities easements are located as shown on the Survey for maintenance of the easement areas. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment to Owners' property.

reasonable steps shall be taken to protect the property, and damage shall be repaired by the Person causing the damage at its sole expense.

Section 6. Easements for Maintenance and Repair. There shall be reciprocal appurtenant easements between adjacent Lots for the purpose of maintaining or repairing the improvements, including, without limitation, landscaping located on each Lot which easement shall extend to a distance of not more than five feet (5') as measured from any point on the common boundary between the Lots and along a line perpendicular to such boundary at such point. The easement shall be used only for such period of time as is reasonably necessary in order to complete the needed maintenance or repair. The Owner exercising this easement right shall be liable for the prompt repair of any damage to the Lot over which this easement is exercised which is caused by the maintenance or repair work. The damaged portions of such Lot shall be restored to substantially the same condition as existed prior to damage.

Section 7. Easement for Street Light and Street Signs. There is hereby reserved to Declarant, the Association, and the designee of either, an easement over and upon all of the Community for ingress to, egress from, installation, construction, landscaping and maintenance of street light and street signs for the Community. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around all street lights and street signs.

Section 8. Easement for Entry Features. There is hereby reserved to Declarant and the Association an easement for ingress, egress, installation, construction, landscaping and maintenance of entry features and similar streetscapes for the Community, over and upon each Lot which is bounded by the right-of-way providing primary access to the Community and every other Lot located at the corner of a street intersection. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around such entry features and the right to grade the land under and around such entry features.

Section 9. Pedestrian Easements. Declarant hereby expressly reserves perpetual pedestrian easements for access to the Common Property for the benefit of the Association and Owners if and to the extent any such easement is shown on any plat for the Community recorded by Declarant in the land records of the county where the Community is located. Except as may be authorized by the Board in its sole discretion, no motorized vehicles of any type whatsoever shall be permitted on any such easement area.

Section 10. Public in General. The easements and rights created in this Article XII do not, are not intended to, and shall not be construed to create any easements or rights in or for the benefit of the general public; provided, however, nothing set forth herein shall in any way limit or restrict any existing easements or rights already granted to the public as such easements or rights are previously recorded in the Cherokee, Georgia records. The Board of Directors hereby reserves the right to close temporarily, to the extent reasonably practicable, upon fifteen (15) days prior written notice (which may be given by posting in conspicuous locations upon the relevant portion of the Community), all or any portion of the Community that, in the reasonable opinion of the Board, may be legally necessary to prevent a dedication thereof, or any accrual of any rights therein, in the general public or in any Person other than the Persons for which such easements are expressly created in this Declaration.

Section 11. Construction and Sale Period Easement. Notwithstanding any provisions contained in this Declaration, the Bylaws, Articles of Incorporation of the Association, use restrictions, rules and regulations, design guidelines, and any amendments thereto, so long as Declarant owns any property in the Community for development and/or sale, Declarant reserves an easement across all property in the Community for Declarant to maintain and carry on, upon such portion of the Community as Declarant may reasonably deem necessary, such facilities and activities as in the sole opinion of Declarant may be required,

convenient, or incidental to Declarant's development, construction, and sales activities related to property described on Exhibit "A" to this Declaration, including, but without limitation, (a) the right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in the Community, including, without limitation, any Lot; (b) the right to tie into any portion of the Community with driveways, parking areas and walkways; (c) the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; (d) the right to grant easements over, under, in or on the Community, including, without limitation, the Lots, for the benefit of neighboring properties for the purpose of tying into and/or otherwise connecting and using sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; (e) the right to carry on sales and promotional activities in the Community; (f) the right to erect and maintain signs; (g) the right to construct and operate business offices, construction trailers, model residences, and sales offices; and (h) the right to use the parking facilities within the Community. Declarant may use residences, offices, or other buildings owned or leased by Declarant as model residences and sales offices. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense. This Section shall not be amended without Declarant's express written consent until Declarant's rights hereunder have terminated as hereinabove provided.

Section 12. General. Each Lot shall be subject to those easements, if any, shown or set forth on the recorded Survey(s) for the Community, as amended from time to time as well as the easements now or hereafter established by Declarant in this Declaration or by any other documents filed for record in the Office of the Clerk of Superior Court of Cherokee County, Georgia.

Section 13. Easement for Drainage. There is hereby reserved to Declarant and granted to the Association a blanket easement across the Community for creating and maintaining satisfactory storm water drainage in the Community; provided, however, such easement area shall not include any portion of the Community within the boundaries of any improvements within the Community owned by a party other than the Association. This easement shall include the right to construct and maintain catch basins, retention ponds, detention ponds, drainage swales, storm sewers, storm drains, sloping banks, cut or fill. It is anticipated that increased storm water run off across downstream property will result from the construction of impervious surface within or adjacent to the Community. Neither Declarant, any Approved Builder, the Association or any Owner constructing according to plans and specifications approved under Article IX, Section 3 hereof shall have any liability to any Owner due to the increased flow or increased velocity of surface water resulting from approved construction within the Community.

Section 14. Approved Builders. Approved Builders shall have the same easement rights as Declarant necessary for the construction and sales activities of Lots, including, without limitation, those easement rights granted to Declarant in this Article XII.

Article XIII **Annexation and Withdrawal of Property**

Section 1. Annexation of Property. Subject to the consent of the owner(s) thereof and the consent of the Declarant (so long as the Declarant owns any property for development and/or sale in the Community or has the right unilaterally to annex additional property to the Community), upon the affirmative vote or written consent, or any combination thereof, of the Owners of at least two-thirds (2/3) of the Lots (other than Lots owned by Declarant so long as the consent of Declarant is required), the

Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the county in which the property to be annexed is located a Supplementary Declaration describing the property being annexed. Any such Supplementary Declaration shall be signed by the President of the Association whose signature shall be attested by the Secretary of the Association, and any such annexation shall be effective only upon the filing for record of such Supplementary Declaration, unless a later effective date is provided therein.

Section 2. Withdrawal of Property. Declarant reserves the right to amend this Declaration so long as it owns any property for development and sale in the Community pursuant to this Article for the purpose of removing any portion of the Community then owned by Declarant or the Association from the coverage of this Declaration, to the extent originally included in error or as a result of any changes whatsoever in the plans for the Community, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Community.

Section 3. Additional Covenants and Easements. Declarant may unilaterally subject any portion of the Community submitted to this Declaration initially or by Supplemental Declaration to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrent with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than Declarant.

Article XIV **Declarant's Rights**

Any or all of the special rights and obligations of Declarant set forth in this Declaration or the Bylaws may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration or in the Bylaws, as applicable. Furthermore, no such transfer shall be effective unless it is in a written instrument signed by Declarant and duly recorded in the public records of Cherokee County.

Article XV **General Provisions**

Section 1. Enforcement. Each Owner and Occupant shall comply strictly with the Bylaws, the rules and regulations, the use restrictions, as they may be lawfully amended or modified from time to time, and with the covenants, conditions, and restrictions set forth in this Declaration and in the deed to such Owner's Lot, if any. The Board of Directors may impose fines or other sanctions, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the Bylaws or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board of Directors, on behalf of the Association, or, in a proper case, by an aggrieved Owner. In any such action for damages or injunctive relief by the Association, the Association shall be entitled to recover reasonable attorney's fees actually incurred and court costs incurred by the Association in bringing such action. Failure by the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Board shall have the right to record in the appropriate land records a notice of violation of the Declaration, Bylaws, rules and regulations, use restrictions, or design guidelines and to assess the cost of recording and removing such notice against the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing. In addition to the other remedies provided herein, the Association shall have the right to suspend

the voting rights of a Lot Owner for a reasonable period of time for an infraction of the Declaration, Bylaws or rules and regulations promulgated pursuant to this Declaration.

Section 2. Self-Help. In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon any Lot or any other portion of the Community to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates this Declaration, the Bylaws, the rules and regulations, or the use restrictions. Unless an emergency situation exists, the Board shall give the violating Lot Owner ten (10) days written notice of its intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after reasonable notice. All costs of self-help, including, without limitation, reasonable attorney's fees actually incurred, shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of assessments.

Section 3. Duration. The covenants, restrictions and easements of this Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent permitted by law. However, so long as Georgia law limits the period during which covenants restricting lands to certain uses may run, any provision of this Declaration affected by the law shall run with and bind the land so long as permitted by the law, after which time the provisions shall be automatically extended for successive periods of twenty (20) years, unless fifty-one percent (51%) of the persons owning Lots execute a document to terminate the covenants containing a legal description of the entire area affected by the covenant, a list of all owners affected by the covenant and a description of the covenant to be terminated or such other requirement as provided in O.C.G.A. § 44-5-60. A written instrument reflecting any termination must be recorded no sooner than, but within two (2) years immediately preceding the beginning of a twenty (20) year renewal period. Every purchaser or grantee of any interest (including, without limitation, a security interest) in any interest (including, without limitation, a security interest) in any real property subject to this Declaration, by acceptance of a deed or other conveyance, agrees that provisions of this Declaration may be extended and renewed as provided in this Paragraph.

Section 4. Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith, (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration, (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration, or (d) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure or guarantee Mortgage loans on the Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's Lot unless any such Lot Owner shall consent thereto in writing. Further, so long as Declarant owns any property for development and/or sale in the Community, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Lot Owner hereunder, nor shall it adversely affect title to any Lot without the consent of the affected Lot Owner.

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of the Owners of at least two-thirds (2/3) of the Lots and the consent of Declarant (so long as Declarant owns any property for development and/or sale in the Community). Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified therein. Notwithstanding the foregoing, no provision of this Declaration which benefits, reserves

or grants special rights to Declarant shall be amended, modified, altered or deleted without Declarant's prior written approval so long as Declarant owns any property for development and/or sale in the Community.

Any lawsuit challenging any aspect of an amendment to this Declaration must be filed in the Office of the Clerk of the Superior Court of Cherokee County, Georgia within one (1) year of the date of recordation of such amendment in the Cherokee County, Georgia land records.

Section 5. Security. **THE ASSOCIATION MAY, BUT SHALL NOT BE OBLIGATED TO, MAINTAIN OR SUPPORT CERTAIN ACTIVITIES WITHIN THE COMMUNITY DESIGNED TO MAKE THE COMMUNITY SAFER THAN THEY OTHERWISE MIGHT BE. NEITHER THE ASSOCIATION, DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE COMMUNITY. NEITHER THE ASSOCIATION, DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE FOR FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY LOT, AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER, ACKNOWLEDGE THAT THE ASSOCIATION, AND ITS BOARD OF DIRECTORS, DECLARANT, ANY SUCCESSOR DECLARANT, AND ACC DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM, OR OTHER SECURITY SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY DECLARANT OR THE ACC, IF ANY, MAY NOT BE COMPROMISED OR CIRCUMVENTED; NOR THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS, IF ANY, WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, ASSAULT OR OTHERWISE; NOR THAT FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS, IF ANY, WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. ALL OWNERS AND OCCUPANTS OF ANY LOT, AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER, ACKNOWLEDGE AND UNDERSTAND THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT ARE NOT INSURERS. ALL OWNERS AND OCCUPANTS OF ANY LOT AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER ASSUME ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS, AND TO THE CONTENTS OF LOTS AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, OCCUPANT, OR ANY TENANT, GUEST, OR INVITEE OF ANY OWNER RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS, IF ANY, RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTIES.**

Section 6. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

Section 7. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any Person or to any property shall be prohibited or held invalid, such prohibition or

invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

Section 8. Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

Section 9. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

Section 10. Indemnification. To the fullest extent allowed by applicable Georgia law, the Association shall 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.

Section 11. Notice of Sale or Lease. In the event an Owner leases or sells such Owner's Lot, the Owner shall give to the Association, in writing, prior to the effective date of such sale, the name of the purchaser or lessee of the Lot and such other information as the Board may reasonably require. Upon acquisition of a Lot, each new Owner shall give the Association, in writing, the name and mailing address of the Owner and such other information as the Board may reasonably request.

Section 12. Implied Rights. The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws, the Articles of Incorporation of the Association, 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.

Section 13. Variances. Notwithstanding anything to the contrary contained herein, the Board of Directors or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Community.

Section 14. Agreements. All agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors shall be

binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

Section 15. Dispute Resolution. Any 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 director, or any agent 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 or Occupant's grievance before filing suit. Upon receiving a requesting for a hearing, the Board shall give notice of the date, time and place of the hearing to the person request the hearing. The Board shall schedule this hearing for a date no less than seven (7) or more than twenty-one (21) days from the date of receipt of the notice of the hearing by the person requesting the hearing.

Section 16. Disclosures. Each Owner and Occupant acknowledge the following:

(a) The Community is located adjacent to thoroughfares that may be affected by traffic and noise from time to time and may be improved or widened in the future;

(b) The views from an Owner's Lot may change over time due to, among other circumstances, additional development and the removal or addition of landscaping;

(c) Declarant makes no representations regarding the schools that currently or may in the future serve the Community;

(d) Since in every neighborhood, there are conditions which different people may find objectionable, it is acknowledged that there may be conditions outside of the Community that an Owner or Occupant may find objectionable and that it shall be the sole responsibility of the Owners and Occupants to become acquainted with neighborhood conditions which could affect the Lot; and

(e) All Owners and Occupants acknowledge and understand that Declarant and/or Approved Builders will be engaging in other construction activities related to the construction of the Community. Such construction activities may, from time to time, produce certain conditions in the Community, including, without limitation: (i) noise or sound that is objectionable because of its volume, duration, frequency or shrillness; (ii) smoke; (iii) noxious, toxic, or corrosive fumes or gases; (iv) obnoxious odors; (v) dust, dirt or flying ash; (vi) unusual fire or explosion hazards; and/or (vii) temporary interruption of utilities and services; and/or (viii) other conditions that may threaten the security or safety of Persons in the Community. Notwithstanding the foregoing, all Owners and Occupants agree that such conditions in the Community resulting from construction activities shall not be deemed a nuisance and shall not cause Declarant and/or Approved Builder or their respective agents to be deemed in violation of any provision of the Declaration.

Section 17. Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

Section 18. Preparer. This Declaration was prepared by Seth G. Weissman and Jane C. Kotake, Weissman, Nowack, Curry & Wilco, P.C., One Alliance Center, 4th Floor, 3500 Lenox Road, Atlanta, Georgia 30326.

IN WITNESS WHEREOF, the undersigned, Declarant herein, hereby executes this instrument by and through its duly authorized officers and under seal this 20th day of January, 2004.

DECLARANT:

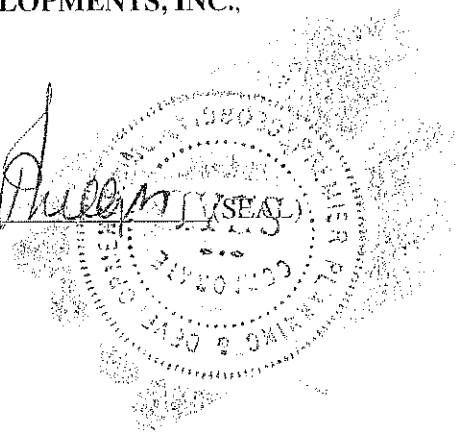
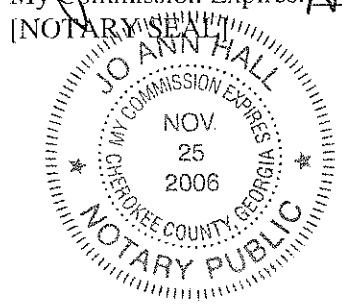
PREMIER PLANNING AND DEVELOPMENTS, INC.,
a Georgia corporation

Signed, sealed and delivered
in the presence of:

Christy Zick
Witness
Jo Ann Hall
Notary Public

By: J Harold Phillips
Name: J. Harold Phillips
Title: President

My Commission Expires: Nov 25, 2006



BR ru
6933 098

EXHIBIT "A"

Property Subject To The Declaration

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lots 817, 818, 839 and 840 of the 3rd District, 2nd Section of Cherokee County, Georgia, containing 59.95 acres, being more particularly described on that certain Final Plat for Lathern's Mill, dated November 26, 2003, prepared by Ron R. Wikle, Georgia Registered Land Surveyor No. 2578, and recorded on November 26, 2003, in Plat Book 76, Page 113, Cherokee County, Georgia land records.

EXHIBIT "B"

**BYLAWS
OF
LATHEM'S MILL HOMEOWNERS ASSOCIATION, INC.**

WEISSMAN, NOWACK, CURRY & WILCO, P.C.

Attorneys

One Alliance Center, 4th Floor
3500 Lenox Road
Atlanta, Georgia 30326
(404) 926-4500

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