

After Recording Return To:

DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS
FOR
THE GROVE AT FOREST HILLS

THIS DECLARATION made on the date hereinafter set forth by **MCMURTRY & ASSOCIATES, INC.**, a Georgia corporation, (hereinafter sometimes called "Declarant");

WITNESSETH

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

WHEREAS, Declarant intends to develop on lands including the real property described above a development to be known as The Grove at Forest Hills (hereinafter sometimes referred to as the "development" or "subdivision"); and

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

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

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

ARTICLE I

DEFINITIONS

(a) "Association" shall mean The Grove at Forest Hills Homeowner's Association, Inc., a Georgia non-profit membership corporation, which Declarant shall cause to be incorporated for the purpose of seceding to Declarant's administration and enforcement of this Declaration.

(b) "Common Property" shall mean any real property (together with any and all improvements now or hereafter located thereon) now or in the future owned by the Association for the common use enjoyment of the Owners.

(c) "Common Facilities" shall mean and refer to any and all water, electric, cable television equipment, facilities, easement areas, storm drainage and retention areas or related improvements located within the Community for the common good of same.

(d) "Community" shall mean and refer to that certain property described on Exhibit "A" attached hereto and incorporated herein by this reference, which comprises the residential subdivision development known as Branch Estates.

(e) "Declarant" shall mean and refer to McMurtry & Associates, Inc., a Georgia corporation and the successors-in-title and assigns of the said McMurtry & Associates, Inc., provided any such successor-in-title or assign shall acquire for the purpose of development or sale all or any portion of the remaining undeveloped or unsold portions of the real property in the Community, and provided, further, in the instrument of conveyance to any successor-in-title or assign, such successor-in-title or assign is designated as the Declarant hereunder by the grantor of such conveyance, which grantor shall be the Declarant, whereupon all rights and obligations of the former Declarant in and to such status as Declarant hereunder shall cease. It is understood that as to all of the property within the Community, there shall be only one (1) person or legal entity entitled

to exercise the rights and powers of the Declarant hereunder at any one point in time; and provided further, Declarant may assign its rights as set forth in this Declaration to such Person or Persons as it deems proper.

(f) "Lot" shall mean any plot of land located within the Community which constitutes a single dwelling site designated on the Plat, as well as any building or any portion of any building located thereon which is intended for independent residential use.

(g) "Member" shall mean any member of the Association.

(h) "Membership" shall mean the collective total of all Members of the Association.

(i) "Mortgage" means any mortgage, deed to secure debt, security deed, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of any obligation.

(j) "Owner" shall mean and refer to the record owner, whether one or more persons, of the fee simple title to any Lot located within the Community, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation.

(k) "Person" means any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, limited liability company, or other legal entity.

(l) "Plat" shall mean and refer to the plat or survey of the Community that is recorded in the office of the Clerk of the Superior Court of Cobb County, Georgia, in Plat Book _____, Page _____, together with any revisions thereof.

(m) "Restrictions" shall mean all covenants, restrictions, easements, charges, liens and other obligations created or imposed by this Declaration.

(n) "Storm Retention Pond" shall mean the "pond lot" shown on the Plat and all facilities related thereto.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

The real property, described in Exhibit "A", which is, by the recording of this Declaration, subject to the covenants and restrictions hereafter set forth and which, by virtue of the recording of this Declaration, together with such additional real property, if any, which shall be added to and made a part of the Community in the future, shall be held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to this Declaration is the real property described as the Community in Article I hereof.

ARTICLE III

COMMON PROPERTY, COMMON FACILITIES

Section 1. Conveyance of Common Property.

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

(b) The Declarant may, at Declarant's sole discretion, modify, alter, increase, reduce and otherwise change the Common Property contemplated to be conveyed to the Association in accordance with this subsection (b) of this Section 1 at any time prior to conveyance of such Common Property to the Association.

(c) The Declarant may convey to the Association in accordance with this Section 1 such other real and personal property as the Declarant may determine to be necessary or proper for the completion of development of the Community.

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

Section 2. Right of Enjoyment of Common Property. Every Owner shall have a right and easement to use and enjoy the Common Property, which right shall be appurtenant to and shall pass with the title to every Lot upon transfer; provided, however, that no Owner shall do any act which interferes with the free use and enjoyment of the Common Property by all other Owners. The right and easement of enjoyment granted or permitted by this Section 2 as to Common Property is subject to suspension by the Association as hereinafter provided.

Section 3. Right of Enjoyment of Common Facilities. The Association shall have a permanent easement over and across all of the other Common Facilities for the maintenance and operation of same for their intended purposes, to the extent same are not maintained by the City of Smyrna or Cobb County, Georgia.

Section 4. Right of the Association. The rights and privileges conferred in Section 2

and 3 hereof shall be subject to the right of the Association acting through its Board of Directors ("Board") to:

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

(b) borrow money for the purpose of carrying out activities of the Association, including the acquisition, construction, improvement, equipping and maintenance of Common Property and Common Facilities, and in aid thereof to encumber by deed to secure debt, mortgage or other security interest any or all of the Association's property including Common Property and revenues from assessments, user fees and other sources; and provided, however, that during the period when the Declarant has the right to elect an absolute majority of the Board, the Association shall not deed, grant or convey to anyone any mortgage, deed to secure debt or other security interest on or in Common Property, constituting real estate without approval by Declarant and a two-thirds (2/3) vote of the Members who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the By-Laws of the Association.

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

(d) dedicate or transfer all or any part of the Common Property or interests therein and in the Common Facilities to any municipality or other governmental body, agency or authority for such purposes and subject to such provisions and conditions as may be agreed upon by the Association and such grantee, including a provision that such property or interest shall, if such dedication or transfer is approved by a two-thirds (2/3) vote of those Members who are present in person or by proxy and voting at a meeting of Members duly in accordance with the By-Laws of the Association, cease to be subject to this Declaration or all or any part of the Restrictions while held by any such municipality or other governmental body, agency or authority.

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

(f) to sell, lease or otherwise convey all or any part of its properties and interests therein; and

(g) enforce all applicable provisions of valid agreements of the Association relating to the Common Property and Common Facilities or any part thereof.

Section 5. Types of Common Property. At the time of the conveyance of any real property by the Declarant to the Association to be used as Common Property, the Declarant shall designate in the deed of conveyance that such real property is to be Common Property, and further

may designate in the deed of conveyance the specific or general purpose for which such real property or any portion thereof may be used, and in such event, such real property or portion thereof shall not, without a two-thirds (2/3) vote of each class of Members of the Association, be used for any different purpose or purposes without the prior written consent of the Declarant.

Section 6. Delegation of Use. Any Owner may delegate to the members of his family or his tenants who reside on a Lot, in accordance with the By-Laws, his right to use and enjoy the Common Property and Common Facilities.

Section 7. Maintenance of Common Property and Common Facilities. It shall be the responsibility of the Association to maintain the Common property and Common Facilities and pay all costs related thereto.

ARTICLE IV

BUILDING REQUIREMENTS

The following property rights and architectural restrictions shall apply to the Community.

Section 1. Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed except with the prior written approval of Declarant. Declarant, however, hereby expressly reserves the right to replat any two or more Lots in order to create a modified residential Lot or Lots and to take such other steps as reasonably may be necessary to make such replated Lot or Lots suitable as a building site or sites. All of the covenants and restrictions set forth herein shall apply to each such Lot, if any, so created. Any such division, boundary line change, or replated Lot shall not be in violation of the applicable Cobb County subdivision and zoning regulations.

Section 2. Approval of Plans. No building, fence, wall, road, driveway, parking area, tennis court, swimming pool, or other structure or improvement of any kind ("improvement") shall be erected, placed, altered, added to, modified, maintained, or reconstructed on any Lot until the plans thereof including the proposed location thereof upon the Lot shall have been approved in writing by the Architectural Review Committee as hereinafter defined ("ARC") as hereinafter provided.

Section 3. Building Location. Since the establishment of inflexible building setback lines for locating houses or other structures tends to force construction of buildings both directly behind and directly to the side of other homes or buildings with detrimental effect on privacy, view, preservation of important trees, etc., no specific setback lines are established by these covenants and restrictions other than those which may be required by applicable governmental rules and regulations and those which may be shown on recorded plats which shall be observed. The ARC reserves the right to control solely and absolutely the precise site and location of any proposed house, dwelling, building, or other structure or improvement upon all Lots. Such location shall be determined, however, only after

reasonable opportunity is afforded the Lot Owner to request a specific site.

Section 4. Provision of Adequate Parking. Unless otherwise approved by the ARC, each residence on a Lot shall include an attached or detached garage containing a minimum of two (2) covered automobile parking stalls, and these garages shall have overhead doors which when shut completely cover the garage entrance. Except as needed for entering and exiting a garage and maintenance and repair of same, garage doors shall be kept in a closed position. If the occupants of a Lot shall have more motor vehicles than the number of covered parking stalls serving their Lot, the Owner of such Lot shall provide paved, off street parking for each of such additional motor vehicles and, unless otherwise approved by the ARC, this parking shall be located entirely within the building setback area. Under no circumstances shall any truck, trailer, recreational vehicle, motorcycle, any other motorized vehicle or motor home or boat be stored in an uncovered visible area more than 48 hours.

Section 5. Attachment of Utilities. No permanent utility connections shall be made to any dwelling or other structure by any utility, public or private, until the ARC has verified the plans and specifications therefor submitted pursuant to this Declaration, and has approved said utility connections in writing. Each Lot, parcel of land, residence, building, or other structure on said property, when required to be served by a utility, must be served by a water system and other utilities approved by the ARC.

Section 6. Other Building Requirements. The requirements set forth below are in no way to be construed as limiting the exercise of the ARC's discretion otherwise provided in this Declaration.

(a) It is the intention of the architectural review and control process to create a consistency and as a result an enduring personality that will enhance the appeal of the subdivision as a whole and each individual home over time. The elevations of all such houses must be drawn by an architect or designer. In connection with construction of a house on a Lot, each Lot shall have a landscape plan which must be designed by a landscape architect or designer approved by Declarant.

(b) In the evaluation of plans, particular attention will be paid to the proposed dwelling proportion and sensitivity to scale as well as consistency with the Community architectural theme. Homes that dominate or overpower the surroundings or neighboring homes will not be approved.

(c) Each residence and other structures shall be constructed only of materials and in color approved by the ARC.

(d) Driveways and walkways shall be constructed only of concrete, asphalt or other materials approved in writing by the ARC.

(e) The exterior of all residences and other structures must be completed within twelve (12) months after commencement of construction, and the landscaping on such Lot must be completed

within ninety (90) days thereafter, except, in each case, where, in the sole determination of the ARC, such completion is not possible or would result in great hardship to the Owner or builder due to inclement weather, strike, fire, national emergency, or natural calamity.

(f) All electrical service, cable television, and telephone lines shall be placed underground, and no exterior pole, satellite dish, tower, antenna, or other device for the transmission or reception of television signals, radio signals, or any other form of electronic signal, or for any other purpose shall be erected, placed, or maintained on any Lot, except as may be constructed by the Declarant or the ARC or approved by the ARC; provided, however, that 18 inch exterior satellite television receiving dishes will be permitted if attached to the house and not visible to a Community street nor from an adjacent house.

(g) The design, type, location, size, color, and intensity of all exterior lights shall be subject to control by the ARC, and only such exterior lighting as shall have been approved by the ARC shall be installed or used on any Lot.

(h) Mechanical equipment (other than heating or air conditioning equipment), fuel or water tanks, and similar storage receptacles shall be installed only within the main dwelling, within an accessory building, buried underground, or otherwise located or screened so as to be concealed from view of neighboring Lots, streets, and property-located adjacent to the Community. Heating and air conditioning equipment shall be installed in such location as will, to the maximum extent possible, not be readily visible to the view of neighboring Lots, streets, and property located adjacent to the Community.

ARTICLE V

USE RESTRICTIONS

Section 1. Residential Use. All Lots shall be used for single-family residential purposes exclusively. Except as otherwise provided herein, no structure or other improvement shall be erected, altered, placed, maintained, or permitted to remain on any Lot other than one (1) detached single-family dwelling and improvements related to Common Facilities. No business or business activity shall be carried on or upon any Lot at any time except with the written approval of the Declarant; provided, however, nothing herein shall prevent Declarant (or Persons designated by Declarant) from using any Lot for the purpose of carrying on business related to the development and management of the Community, including the construction of a building (or buildings) on a Lot (or Lots) for use as a model home (or model homes) or for use as a sales office.

Section 2. Signs. No commercial signs or advertising of any kind, except for "For Sale" or "For Rent" signs of a type and location consistent with the type and locations of such signs in other first class residential developments in the vicinity of the Community, shall be erected, placed, or maintained

on any Lot, except with the written permission of the ARC or except as may be required by legal proceedings. The approval of signs shall be upon such conditions as may from time to time be determined by the ARC and may be reasonably withheld. If such permission is granted, the ARC reserves the right to restrict the size, color, material, and content of such signs. Also, the provisions of this Section shall not apply to any Person holding a mortgage who becomes the Owner of any Lot or a purchaser at a judicial or foreclosure sale conducted with respect to a first mortgage or as transferee pursuant to any proceeding in lieu thereof.

Section 3. Mailboxes, Property Identification Markers and Decorative Hardware. The ARC shall have the right to approve the location, color, size, design, lettering, and all other particulars of mail and newspaper boxes, if any, and of name signs on such boxes, as well as property identification markers and decorative hardware, whether attached to such mailbox, to any structure within the Lot, or affixed or erected upon the grounds of the Lot. Further, all mailboxes shall be black with black post.

Section 4. Clotheslines, Garbage Cans, Woodpiles, Etc. All clotheslines, garbage cans, woodpiles, and other similar items shall be located or screened so as to be concealed from view of neighboring Lots, streets, and property located adjacent to the Community. All rubbish, trash, and garbage shall be regularly removed from the Lot and shall not be allowed to accumulate thereon. No trash containers shall be placed on streets or on driveways near streets except temporarily for access by pick up services. Only one trash service will be used by the Community and Owners as determined by majority vote of the Association.

Section 5. Prohibited Structures. No mobile home, house trailer, tent, shack, or other outbuilding or structure (except accessory buildings permitted above) shall be placed on any Lot at any time, either temporarily or permanently, without written permission of the ARC; provided, however, house trailers, temporary buildings, and the like shall be permitted for construction purposes during the construction period of residences or as one or more real estate sales offices of Declarant for the sale of Lots and builders who have purchased Lots for resale.

Section 6. Animals and Pets. No animals, livestock or poultry of any kind may be raised, bred, kept or permitted on any Lot, with the exception of dogs, cats, or other usual and common household pets in reasonable number, provided that said pets are not kept, bred, or maintained for any commercial purpose, are not permitted to roam free, and do not make objectionable noise, constitute a nuisance, and do not endanger the health of the Owners of other Lots or the owner of any property located adjacent to the Community. Dogs which are household pets shall at all times whenever they are outside a dwelling be confined within a pen or on a leash. No structure for the care, housing or confinement of any pets shall be maintained so as to be visible from neighboring property. Any such structure shall be subject to the approval of the ARC as provided for herein. Any pet droppings on a Lot or Common Property or Common Facilities shall be properly disposed of by the Owner.

Section 7. Parking.

(a) No automobiles or motor driven vehicles may be left upon any Lot for a period longer than fifteen (15) days in a condition such that it is incapable of being operated upon the public highways. After such fifteen (15) day period, such vehicle shall be considered a nuisance and detrimental to the welfare of the neighborhood and may be removed from the Community. Any towed vehicle, boat, motor home or mobile home regularly stored upon any Lot or temporarily kept thereon for periods longer than twenty-four (24) hours each shall be considered a nuisance and may be removed from the Community. The foregoing, however, does not apply to such boats or vehicles, whether motor-driven or towed, as are stored wholly within a private garage.

(c) No commercial vehicles may be parked, stored, or temporarily kept within the Community, unless such vehicles are stored wholly within private garages, are within the Community temporarily to service existing improvements, or are used in connection with the construction of improvements within the Community.

Section 8. Nuisance. It shall be the responsibility of each Lot owner to prevent the development of any unclean, unhealthy, unsightly, or unkept condition of buildings or ground on his or her Lot or Lots. No Lot shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear obnoxious to the eye; nor shall any substance, thing, or material be kept upon any Lot that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of the Community or surrounding property. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property adjacent to the Lot. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of property in the neighborhood by the Owners thereof.

Section 9. Required Maintenance and Mandatory Landscape Maintenance. All Lots, together with the exterior of all improvements and the landscaping located thereon, shall be maintained in a neat, attractive, and safe condition by their respective Owners. Such maintenance shall include, but shall not be limited to, painting, repairing, replacing, and caring for roofs, gutters, downspouts, building surfaces, patios, porches, courtyards, and other exterior improvements. Further, all property shall be landscaped and regularly maintained to include but not be limited to mowing, mulching, weed control, and general pruning.

Section 10. Fences. No fence or wall of any kind shall be erected, maintained, or altered on any Lot without the prior written approval of the ARC of plans and specifications for such fences or walls. Guidelines relating to the design, location and use of fences and walls may be included in any design standards established by the ARC.

ARTICLE VI

THE ASSOCIATION

Section 1. Purposes. The Declarant shall form the Association as a non-profit civic organization for the sole purpose of performing certain functions for the common good and general welfare of the people of the Community, primarily including, but not limited to, the maintenance, repair, and reconstruction of the Common Property and Common Facilities, in conformity with this Declaration and all applicable municipal, state and county regulations, codes, ordinances and rules related to same and the maintenance of landscaping of Lots as provided in Section 9 of Article V hereof. The Association shall have no power or duty to do or perform any act or thing other than those acts and things which will promote in some way the common good and general welfare of the people of the Community. To the extent, and only to the extent, necessary to carry out such purpose, the Association (a) shall have all of the powers of a corporation organized under the Georgia Nonprofit Corporation Code and (b) shall have the power and duty to exercise all of the rights, powers and privileges and to perform all of the duties and obligations of the Association as set forth in this Declaration.

Section 2. Membership, Voting Rights, Membership Meetings. Matters concerning membership in the Association, Member voting and voting rights, and Membership meetings and the conduct thereof shall be set forth in and controlled by the Bylaws of the Association as same shall be in effect from time to time ("Bylaws").

Section 3. Board of Directors. The affairs of the Association shall be managed by a Board of Directors. The number of Directors, the method of election of Directors, their removal, powers and meetings shall be governed by this Declaration, the Georgia Non- Profit Corporation Code, the Articles of Incorporation and Bylaws of the Association. The initial number of Directors shall be three (3).

Section 4. Suspension of Membership. The Board of Directors ("Board") may suspend the voting rights of any member and any other rights granted hereunder of any person who:

(a) shall be subject to the right of abatement, as defined in Section 2 of Article X by reason of having failed to take the reasonable steps to remedy a violation or breach of this Declaration within thirty (30) days after having received notice of the same pursuant to the provisions of Section 2 of Article X hereof;

(b) shall be delinquent in the payment of any assessment levied by the Association pursuant to the provisions of Article VII hereof; and

(c) such suspension shall be for the balance of the period in which said Member or person shall remain in violation, breach or default, as aforesaid. No such suspension shall prevent an Owner's ingress to or egress from his Lot.

Section 5. Termination of Membership. Membership shall cease only when a person ceases to be an Owner.

Section 6. Control by Declarant. Notwithstanding any other language to the contrary in this Declaration, in the Articles of Incorporation, of in the Bylaws of the Association, Declarant hereby retains the right to appoint and remove any and all members of the Board of the Association and any officer or officers of the Association until such time as the first of the following events shall occur: (i) the expiration of five (5) years after the date of the recording of this Declaration; (ii) the date upon which all of the Lots have been conveyed by Declarant to Owners other than a person or persons constituting Declarant, or any other entity affiliated with said parties who purchase a Lot for the purpose of building a house thereon for resale (collectively, the “Affiliated Owners”); or (iii) the surrender by Declarant of the authority to appoint and remove directors and officers by an express amendment to this Declaration executed and recorded by Declarant, which such amendment shall not require the consent or joinder of any other Persons. Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of this Section, such right shall automatically pass to the Owners, including Declarant if Declarant then owns one or more Lots; and a special meeting of the Association shall be called at such time. At such special meeting, the Owners shall elect a new Board of Directors which shall undertake the responsibilities of the Board, and Declarant shall deliver the books, accounts and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period which Declarant has in its possession. Each Owner of a deed to or other conveyance of a Lot vests in Declarant such authority to appoint and remove directors and officers of the Association as provided in this Section. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law and any other right or privilege reasonably necessary to effectuate any such right or privilege.

Section 7. Storm Retention Pond. The Association shall maintain the Storm Retention Pond in accordance with any applicable standards established by the City of Smyrna or Cobb County, Georgia, and in connection therewith agrees to perform the following duties and responsibilities with the understanding that the City of Smyrna or Cobb County, Georgia shall rely thereon:

(a) To maintain, at its sole cost and expense, the Storm Retention Pond in a structurally sound condition so that they satisfy the functions of which they are intended, to maintain the Storm Retention Pond in clean and safe condition so as not to constitute a hazard or nuisance to the public, and to maintain the Storm Retention Pond in accordance with all applicable rules, standards and regulations applicable thereto as may from time to time be enacted by any governmental agency or authority, including the City of Smyrna or Cobb County. The City of Smyrna or Cobb County is hereby relieved of all responsibility for the maintenance of the Storm Retention Pond for the term of this Declaration.

(b) During and throughout the term of this Declaration, to indemnify and hold harmless the City of Smyrna and Cobb County, its officers, agents and employees from all damages, liability, claims, demands, attorneys' fees and legal costs, relating to or arising from: (a) the drainage function of the Drainage Facilities including the construction of the Drainage Facilities and including the construction, maintenance, operation and use thereof, and (b) the increase of the flow of water or

diversion of the flow of water resulting from the Drainage Facilities.

(c) The Association hereby authorizes the City of Smyrna and Cobb County to enter upon the Community for purposes of inspection, but written notice of the City of Smyrna's and Cobb County's intention to so enter must be given to the Association at least twenty-four (24) hours in advance of said entry. Except, however, in the event of an emergency threatening loss of life or valuable property rights, the City of Smyrna and Cobb County is hereby granted immediate access to the Storm Retention Pond, and the right, but not the obligation, to perform any required maintenance.

(d) The terms of this Declaration with respect to the Storm Retention Ponds shall take effect upon the date hereof and shall continue in effect for as long as the Storm Retention Pond is in existence.

ARTICLE VII

ASSESSMENTS

Section 1. Covenants for Assessments and Creation of Lien and Personal Obligation. The Declarant, to the extent that Declarant is an Owner, hereby covenants and agrees, and each Owner, jointly and severally, for himself, his heirs, devisees, legal representatives successors and assigns, by acceptance of a deed for a Lot, whether or not the covenants contained herein shall be expressed in any such deed, hereby covenants and agrees as follows:

(a) to pay to the Association the annual Assessments which may or shall be levied by the Association pursuant to this Declaration against all Lots;

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

(c) that there is hereby created a continuing charge and lien upon all Lots owned by him against which all such assessments are made to secure payment of such assessments and interest thereon and costs of collection including reasonable attorneys' fees;

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

and all Improvements which may from time to time be placed or located thereon) and (2) to finance the construction, repair or alteration of Improvements;

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

(f) that all annual and special assessments (together with interest thereon as provided in this Declaration and costs of collection including reasonable attorneys' fees) levied against any Lot or Lots owned by him, during the period that he is an owner shall be (in addition to being a continuing charge and lien against such Lot or Lots as provided in Subsection (c) of this Section 1) a personal obligation which will survive any sale or transfer of the Lot or Lots owned by him; provided, however, that such personal obligation for delinquent assessments shall not pass to an Owner's successor in title unless expressly assumed by such successor.

Section 2. Purpose of Assessments The assessments levied by the Association shall be used exclusively for the purpose of providing for the common good and general welfare of the people of the Community, including, but not limited to, security, and acquisition, construction, improvement, maintenance and equipping the Common Property and the Common Facilities, specifically including the Storm Retention Pond, and enforcement of the design standards of the ARC, the payment of operation costs and expenses of the Association, the payment of all principal and interest when due on all debts owed by the Association, and to pay any Owner's delinquent utility charges if the Association has agreed with a provider of utility services to do so.

Section 3. Accumulation of Funds Permitted. The Association shall not be obligated to spend in any calendar year all the sums collected in such year by way of annual assessments or otherwise, and may carry forward from year to year such surplus as the Board may deem to be desirable for the greater financial security of the Association and the effectuation of its purposes.

Section 4. Annual Assessments.

(a) Beginning on the Commencement Date (as hereinafter defined) and continuing thereafter until January 1 of the year immediately following the Commencement Date, each Lot shall be subject to a maximum annual assessment in an amount established by the Board of Directors of the Association. In the event that the Commencement Date falls on a day other than January 1, the annual assessment for such year shall be prorated so that each Owner pays an annual assessment proportional to the number of days remaining in the calendar year. The words "Assessment Year" as used herein shall mean the calendar year with the first Assessment Year commencing on January 1 of the year immediately following the Commencement Date.

(b) Commencing with the first Assessment Year and continuing thereafter, the maximum annual assessment may be increased at any time and from time to time during each Assessment Year not more than five percent (5.0%) above the maximum annual assessment for the previous Assessment Year without a vote of the Membership. During the first Assessment Year, the

maximum annual assessment may be increased ten percent (10.0%) above the initial annual assessment.

(d) Commencing with the first Assessment Year and continuing thereafter, the maximum annual assessment for each Assessment Year may at any time and from time to time be increased more than ten percent (10.0%) above the maximum annual assessment for the previous Assessment Year if such increase is approved by a two-thirds (2/3) vote of the Members of the Association who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the provisions of the Bylaws of the Association and this Declaration. During the First Assessment Year, the maximum annual assessment may be increased more than ten percent (10.0%) if such increase is approved by a two-thirds (2/3) vote of the Members of the Association who are present or by proxy and voting at a meeting of Members duly held in accordance with the provisions of the Bylaws of the Association and this Declaration.

Section 7. Assessment Procedure.

(a) the Board shall establish the annual assessment for each Assessment Year at an amount determined by the Board and shall also establish the quarterly dates during the Assessment Year on which the quarterly installments of the annual assessment shall be due and payable (such dates are hereinafter referred to as the "Due Date" or "Due Dates"). The Board shall cause the Association to send notice of an assessment to each Owner at least thirty (30) days in advance of the Due Dates. The annual assessment shall become due on the thirtieth (30th) day following such written notice or the Due Date, whichever is later. The Board may establish reasonable payment procedures to allow or require payment of the annual assessment in installments during the Assessment Year. The Board shall also establish payment procedures for payment of any special assessments for capital improvements which may be levied in accordance with the provisions of this Article VII.

(b) All Members of the Association shall be given written notice by the Board not less than thirty (30) nor more than sixty (60) days in advance of any meeting of the Members of the Association at which the Board shall propose taking action pursuant to Section 4(c) and Section 6 of this Article VII. Such written notice shall specify under which Section or Sections the Board will propose action. At such meeting, the presence of Members or of proxies entitled to cast sixty percent (60%) of the total votes outstanding shall constitute a quorum. If the required quorum is not present at such meeting, a second meeting may be called by the Board, and the required quorum at such second meeting shall be thirty percent (30%) of the total votes outstanding. No such second meeting shall be held more than sixty (60) days following the first meeting.

Section 8. Uniform Rate of Assessment. Annual assessments must be fixed at a uniform rate for all Lots.

Section 9. Commencement Date for Assessments. All Lots shall become subject to Annual Assessments as provided for in this Article VII on the date of recording of the subdivision plat

of the Community, or as agreed upon by Declarant, as provided in Section 12 of this Article VII. Annual Assessments for the first year of ownership of a Lot shall be prorated based on the percentage of the initial calendar year during which an owner owns a Lot.

Section 10. Effect of Nonpayment of Assessments. Any Assessment which is not paid on or before the Due Date shall bear interest after the Due Date at the lower of (i) the highest legal rate of interest which can be charged on the lending of money or, (ii) the rate of eighteen percent (18%) per annum or at such rate as the Board may from time to time establish, provided, however, that in no event shall the Board have the power to establish a rate of interest in violation of the laws of the State of Georgia. In the event of default in the payment of any one or more installments of an assessment, the Board may declare any remaining balance of the assessment at once due and payable. In the event that an Owner shall fail to pay fully any such unpaid portion (including any remaining balance declared immediately due and such unpaid portion, payable in accordance with the preceding sentence), together with interest and costs of collection including reasonable attorneys' fees, shall be a binding personal obligation of such Owner, as well as a lien on such Owner's Lot enforceable in accordance with the provisions of this Declaration.

Section 11. Certificate of Payment. Upon written demand by an Owner, the Association shall within a reasonable period of time issue and furnish to such Owner a written certificate stating that all assessments (including penalties, interest and costs, if any) have been paid with respect to any Lot owned by said Owner as of the date of such certificate, or that all assessments, interest and costs have not been paid setting forth the amount then due and payable. The Association may make a reasonable charge for the issuance of such certificate. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser of, or lender on the Lot in question.

Section 12. Approval by Declarant. Notwithstanding anything to the contrary contained herein, no assessment shall be made without the approval of Declarant for so long as Declarant has the right to appoint directors of the Association.

ARTICLE VIII

ARCHITECTURAL CONTROL

Section 1. Architectural Review Committee: Creation and Composition

(a) An Architectural Review Committee (the "ARC") shall be established consisting of not less than three (3) nor more than five (5) individuals, provided, however, the ARC shall have an uneven number of members. Notwithstanding anything to the contrary contained herein, the ARC shall consist solely of the Declarant until the first to occur of (i) five (5) years after the date of recording this Declaration (ii) until every Lot is conveyed by Declarant to a party or parties who are not classified hereunder as successor or assign of Declarant; or (iii) until voluntary surrender in writing by Declarant of its right to appoint the membership of the ARC. All costs of operation of the ARC shall be borne

by the Association.

(b) Each initial member of the ARC shall be appointed for a term expiring five years from date hereof. Thereafter each member of the ARC shall be appointed for a calendar year term. If any vacancy shall occur in the membership of the ARC by reason of death, incapacity, resignation, removal or otherwise, the remaining members of the ARC shall continue to act and such vacancy shall be subject to the provisions of Section 1(a) of this Article VIII, and shall be filled by the Declarant (or Board, if at the time the Board has the right to appoint members of the ARC), at the earliest possible time. Any ARC member may resign at any time by giving written notice of such resignation to the Chairman of the ARC and such resignation shall take effect on receipt thereof by the Chairman. Any member of the ARC may be removed at any time with or without cause by the Declarant (or Board if at the time the Board has the right to appoint members of the ARC).

Section 2. Purpose, Powers and Duties of the ARC. The purpose of the ARC is to assure that any installation, construction or alteration of any improvement on any Lot shall be submitted to the ARC for approval (i) as to whether the proposed installation, construction or alteration is in conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the standards established by the ARC for the Community, and (ii) as to the location of improvements with respect to topography, finished ground elevation and surrounding improvements. To the extent necessary to carry out such purpose, the ARC shall have all of the powers and duties to do each and everything necessary, suitable, convenient or proper for, or in connection with, or incidental to, the accomplishment of such purpose, including without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any improvement on any Lot.

Section 4. Operations of the ARC.

(a) Meetings. The ARC shall hold meetings as needed. Special meetings may be called by the Chairman at any time and shall be called by the Chairman upon the written request of a majority of the members of the ARC then in office. Meetings of the ARC shall be held in such time and at such place as the ARC shall specify. Notice of each meeting of the ARC shall be either hand delivered or mailed to each member thereof at his residence or at his usual place of business at least three (3) days before the day the meeting is to be held. Notice of meetings need not specify the purpose or purposes for which the meeting is called. Notice of a meeting need not be given to any member of the ARC who signs a waiver of notice either before or after the meeting. Attendance of a member of the ARC at a meeting shall constitute a waiver of notice of such meeting and shall constitute a waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened, except when the member states at the beginning of the meeting, any such objection to the transaction of business. At each meeting of the ARC, the presence of a majority of the members then in office shall constitute a quorum for the transaction of business. Except as otherwise provided herein, the act of a majority of the members of the ARC present at any meeting thereof at which a quorum is present shall constitute the act of the ARC. In the absence of a quorum, any member of the

ARC present at the time and place of the meeting may adjourn the meeting from time to time until a quorum shall be present. At any adjourned meeting at which a quorum is present, and business may be transacted which might have been transacted at the meeting originally called, the ARC shall maintain both a record of votes and minutes for each of its meetings. The ARC shall make such records and minutes available at reasonable places and times for inspection by Members of the Association. Any action required to be taken at a meeting of the ARC, or any action which may be taken, may be taken without a meeting if written consent, setting forth the action so taken, shall be signed by all the members of the ARC and be filed within the minutes of the proceedings of the ARC. Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any document filed by the ARC.

(b) Activities.

(i) The ARC shall adopt and promulgate the Design Standards described in Section 5 of this Article VIII and shall, as required, make findings, determinations, rulings, and orders with respect to the conformity with said Design Standards and of plans and specifications to be submitted for approval to the ARC pursuant to the provisions of this Declaration. The ARC shall, as required, issue permits, authorizations, or approvals, which may include specified requirements or conditions, pursuant to the provisions of this Declaration.

(ii) Any two (2) or more members of the ARC may be authorized by the ARC to exercise the full authority of the ARC with respect to all matters over which the ARC has authority as may be specified by resolution of the ARC, except with respect to the adoption or promulgation of the Design Standards. The unanimous action of the two (2) or more members with respect to the matters specified shall be final and binding upon the ARC and upon any applicant for an approval, permit or authorization, subject, however, to review and modification by the ARC on its own motion or appeal by the application to the ARC as provided in this paragraph (ii). Written notice of the decision of such two (2) or more members shall be given to any applicant for an approval, permit or authorization within five (5) working days after written request for action by the applicant. The applicant may, within ten (10) days after receipt of notice of any decision which he deems to be unsatisfactory, file a written request to have the matter in question appealed to the entire ARC. Upon the filing of any such request, the matter with respect to which such request was filed shall be submitted to, and reviewed promptly by, the ARC, but in no event later than thirty (30) days after the filing of such appeal request. The decision of a majority of the members of the ARC with respect to such matter shall be final and binding. The approval of plans or specifications by the ARC shall in no way subject the ARC or its members to any liability or responsibility for defects or loss sustained by virtue of the content thereof.

Section 5. Design Standards.

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

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

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

(iii) assuring the conformity and harmony of external design and general quality of the Community.

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

(c) As part of its Design Standard, the ARC may require that the design of any improvement intended by an Owner for a Lot be prepaid by a design firm selected by the ARC.

Section 6. Submission of Plans and Specifications. No structure shall be commenced, erected, placed, moved onto or permitted to remain on any Lot nor shall any existing improvement upon any Lot be altered in any way which materially changes the exterior appearances of the improvement or Lot, unless plans and specifications therefor shall have been submitted to and approved in writing by the ARC. Such plans and specifications shall be in such form and contain such information as may be reasonably required by the ARC in the Design Standards, including, without being limited to:

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

(b) a foundation plan;

(c) a floor plan;

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

(e) specifications of materials color scheme, lighting scheme and other details affecting the exterior appearance of all proposed improvements and alterations to existing improvements; and

(f) plans for landscaping and grading to include, layout, hardscapes, structures and plant material by variety and size.

Section 7. Approval of Plans and Specifications. Upon approval by the ARC of any plans and specifications submitted pursuant to this Declaration, a copy of such plans and specifications, as approved, shall be deposited for permanent record with the ARC and a copy of such plans and

specifications bearing such approval, in writing, shall be returned to the applicant submitting the same.

Approval for use in connection with any Lot or improvement of any plans and specifications shall not be deemed a waiver of the ARC's right, in its discretion, to disapprove similar plans and specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Lot or improvement. Approval for any such plans and specifications relating to any Lot or improvement, however, shall be final as to that Lot or improvement and such approval may not be revoked or rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specifications, as approved, and any conditions attached to any such approval. Neither Declarant nor the ARC, nor any Person or party to whom Declarant or the ARC shall assign such function shall be responsible or liable in any way for the performance of any builder or for any defects in any plans or specifications approved in accordance with the foregoing nor for any structural defects in any work done.

Section 8. Disapprovals of Plans and Specifications. The ARC shall have the right to disapprove any plans and specifications submitted pursuant to this Declaration because of any of the following:

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

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

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

Section 9. Obligation to Act. The ARC shall take action on any plans and specifications submitted as herein provided within thirty (30) days after receipt thereof. Approval by the ARC, if granted, together with any conditions imposed by the ARC, shall be placed in writing and shall be forwarded to the applicant. Failure by the ARC to take action within thirty (30) days of receipt of plans and specifications submitted for approval shall be deemed approval of such plans and specifications.

Section 10. Inspection Rights. Any employee or agent of the Association or the ARC may, after reasonable notice, at any reasonable time or from time to time enter upon any Lot or improvement thereon for the purpose of ascertaining whether the installation, construction, alteration or maintenance of any improvement or the use of any Lot or improvement is in compliance with the provisions of this

Declaration; and neither the Association, nor the ARC, nor any such agent shall be deemed to have committed a trespass or other wrongful act solely by reason of such entry or inspection, provided such inspection is carried out in accordance with the terms of this Section.

Section 11. Violations. If any improvement shall be erected, placed, maintained or altered upon any Lot, otherwise than in accordance with the plans and specifications approved by the ARC pursuant to the provisions of this Article, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If in the opinion of the ARC such violation shall have occurred, the ARC shall notify the Association. If the Board shall agree with the determination of the ARC with respect to the violation, then the Board shall provide written notice to the Owner by certified mail, setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation. If the Owner shall not have taken reasonable steps toward the required remedial action within thirty (30) days after the mailing of the aforesaid notice of violation, then the Association shall have the Right of Abatement as provided in Section 2 of Article X hereof.

Section 12. Certification of Compliance.

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

(b) Any Certificate of Compliance issued in accordance with the provisions of this Section shall be prima facie evidence of the facts therein stated; and as to any purchaser or encumbrances in good faith and for value, or as to any title insurer, such Certificate shall be conclusive that all improvements on the Lot comply with all the requirements of this Article, provided, however, that the Certificate shall in no way be construed to certify the acceptability, sufficiency or approval by the ARC of the actual construction of improvements or of the workmanship, or to represent or warrant to anyone the quality, function, or operation of the improvements or of any construction, workmanship, engineering, materials or equipment. The issuance of the Certificate shall in no way be construed to certify to any party that the improvements have been built in accordance with any applicable rule or regulation.

Section 13. Fees. The ARC may impose and collect a reasonable and appropriate fee to cover the cost of inspections performed pursuant to this Article. The fee shall be established from time to time by the ARC and published in the Design Standards.

ARTICLE IX

EASEMENTS, ZONING AND OTHER RESTRICTIONS

Section 1. Easements.

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

(i) the erection, installation, construction and maintenance of wires, lines, conduits, and poles and the necessary or proper attachments in connection with the transmission of electricity, telephone, cable television cables and other utilities and similar facilities;

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

(iii) the planting or replanting of hedges, shrubbery, bushes, trees, flowers and plants of any nature; and

Section 2. Easement Area. The words "Easement Area" as used herein shall mean those areas on any Lot or the Community with respect to which easements are shown on the Plat or a recorded deed, and specifically created hereby. Declarant hereby specifically reserves for itself, its successors and assigns, an easement over and across the Common Property and Lots for the purpose of installation, construction, alteration, and maintenance of sewer lines, pipes and equipment serving the Community.

Section 3. Entry. The Declarant hereby reserves for itself and its employees, agents, successors, and assigns, an easement over and across each Easement Area, together with the right at all reasonable times to enter upon all parts of each Easement Area for any of the purposes for which such Easement Area is reserved, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and the carrying out of such purposes, provided the same are done in accordance with the provisions of this Section. The Declarant and its employees, agents, successors and assigns shall be responsible for leaving such Lot or the Community in good condition and repair following any work or activity undertaken in an Easement Area pursuant to the provisions of Section 2 of this Article.

Section 4. Zoning and Private Restrictions. None of the covenants, restrictions or easements created or imposed by this Declaration shall be construed as permitting any action prohibited by applicable zoning laws, or by the laws, rules or regulations of any governmental body. In the event of any conflict between such laws, rules or regulations and the covenants, restrictions and easements created or imposed by this Declaration, the most restrictive provision shall govern and

control.

ARTICLE X

ENFORCEMENT

Section 1. Rights of Enforcement. This Declaration and the Restrictions contained herein shall, except to the extent otherwise indicated, inure to the benefit of and shall be enforceable by:

- (i) the Declarant, so long as it or one or more of the Affiliated Owners is an Owner
- (ii) each Owner, his legal representatives, heirs, successors and assigns, and
- (iii) the holder of any deed to secure debt upon any Lot.

Section 2. Right of Abatement.

(a) Except where different notices of provisions are provided in Section 11 of Article VIII or elsewhere in this Declaration, in the event of a violation or breach of any restriction contained in this Declaration, the Association shall give written notice by certified mail to the Owner setting forth in reasonable detail the nature of such violation or breach and the specific action or actions needed to be taken to remedy such violations or breach. If the Owner shall fail to take reasonable steps to remedy such violation or breach within thirty (30) days after the mailing of said written notice, then the Association shall have the Right of Abatement subject only to the superior right of holders of deeds to secure debt described elsewhere herein.

(b) The Right of Abatement, as used in this Declaration, means the right of the Association, through its agents and employees, to enter at all reasonable times upon a Lot or improvement, as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove or repair such violation, breach or other condition which may exist thereon contrary to the provisions hereof, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and such actions, provided such entry and such actions are carried out in accordance with the provisions of this Section, and with the cost thereof including the costs of collection and reasonable attorneys' fees, together with the interest thereon at the lower of the highest rate permitted by law or eighteen percent (18%) to be a binding personal obligation of such Owner enforceable in law, as well as a lien on such Owner's Lot enforceable pursuant to the provisions of Section 1 of Article VII hereof. Such lien shall be superior to any and all charges, liens or encumbrances which may in any manner arise or be imposed upon the Lot after such entry whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, excepting only:

(i) such liens for taxes or other public charges as by applicable law are made superior.

(ii) the liens created by Section I of Article VII

(iii) all deeds to secure debt given to secure a loan the proceeds of which are used to (1) purchase a Lot or Lots (together with any and all improvements which may from time to time be placed or located thereon) and (2) to finance construction, repair or alteration of improvements.

Section 3. Specific Performance. Nothing contained in this Declaration shall be deemed to affect or limit the rights of the Declarant, the Association or any owner to enforce the restrictions by appropriate judicial proceedings or to recover damages. However, it is hereby declared that it may be impossible to measure accurately in money the damages which will accrue to a beneficiary hereof, its transferees, successors or assigns, by reason of a violation of, or failure to perform any of the obligations provided by this Declaration; and therefore, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

Section 4. Collection of Assessments and Enforcement

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

(b) As an additional remedy, but in no way as a limitation on the remedies, if any assessment, interest, cost or other charge is not paid as required by this Declaration, each owner hereby grants to the Association and its assigns the following irrevocable power of attorney: to sell the said Lot or Lots subject to the lien at auction, at the usual place for conducting sales at the Courthouse in Cobb County, Georgia to the highest bidder for cash, after advertising the time, terms and places of such sale once a week for four weeks immediately preceding such sale (but without regard to the number of days) in the paper in which the Sheriff's advertisements for Cobb County, Georgia are published, all other notice being hereby waived by each Owner, and the Association or any person on behalf of the Association, or assigns, may bid and purchase at such sale and thereupon execute and deliver to the purchaser or purchasers at such sale as conveyance of said property in fee simple, which conveyance shall contain recitals as to the happenings of the default upon which the execution of the power of sale herein granted depends, and each Owner hereby constitutes and appoints the Association and assigns, the agent and attorney in fact of each Owner to make such recitals, and hereby covenants and agrees that the recitals so to be made by the Association, or assigns, shall be binding and conclusive upon the Owner whose property is the subject matter of such sale, and the heirs, executors, administrators, and assigns of such owner, and that the conveyance to be made by the Association or

assigns, shall be effectual to bar all equity or redemption of such Owner, or the successors in interest of such Owner, in and to said Lot or Lots, and the Association or assigns shall collect the proceeds of such sale, and after reserving therefrom the entire amount due for expenses of sale and fifteen percent (15%) of the aggregate amount due for attorneys' fees, shall pay any excess to such Owner, or to the heirs or assigns of such Owner as provided by law. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise and are granted as cumulative to the remedies for collection of said indebtedness provided by law.

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

Section 5. No Waiver. The failure of the Declarant, the Association, or the Owner of any Lot, his or its respective legal representatives, heirs, successor, and assigns, to enforce any restrictions herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to any violation or breach occurring prior or subsequent thereto.

ARTICLE XI

GENERAL PROVISIONS

Section 1. Enforcement. Each Owner shall comply strictly with the covenants and restrictions set forth in this Declaration. In the event of a violation or breach or threatened violation or breach of any of the same, Declarant, the Association, the ARC, or any aggrieved Lot Owner, jointly and severally, shall have the right to proceed at law or in equity to compel compliance therewith or to prevent a threatened violation or breach thereof. In addition to all other remedies, Declarant and the Association shall have the right to enter upon any portion of the Community where a violation exists or where Declarant has reasonable grounds for believing a violation exists and summarily abate or remove, at the expense of the violating Lot Owner and using such force as may be reasonably necessary, any improvement, thing, or condition that may be or may exist contrary to the intent and meaning of the provisions hereof, if after (10) days written notice of such violation it shall not have been corrected by such Lot Owner. Declarant shall not be deemed guilty or liable for any manner of trespass for such entry, abatement, or removal. Such notice may be given in person or by registered

mail.

Should the Declarant employ legal counsel to enforce any of the foregoing, all costs incurred in such enforcement, including a reasonable fee for counsel and court costs, shall be paid by the violating Lot Owner. Inasmuch as the enforcement of the provisions of this Declaration is essential for the effectuation of the general plan of development contemplated hereby and for the protection of present and future Lot Owners, it is hereby declared that any breach thereof cannot be adequately compensated by recovery of damages, and that Declarant, the Association or any aggrieved Lot Owner, in addition to all other remedies, may require and shall be entitled to the remedy by injunction to restrain any such violation or breach or threatened violation or breach. No delay, failure, or omission on the part of Declarant or any aggrieved Lot Owner in exercising any right, power, or remedy thereafter as to the same violation or breach or as to a violation or breach occurring prior or subsequent thereto shall bar or affect its right to exercise or enforce said rights, powers, or remedies. No right of action shall secure nor shall any action be brought or maintained by anyone whatsoever against Declarant for or on account of any failure to bring any action on account of any violation or breach or threatened violation or breach of the provisions of this Declaration, however long continued, or for imposing provisions which may be unenforceable.

Section 2. Duration. The provisions of this Declaration shall run with and bind the land that is the Community and shall be and remain in effect for a period of twenty (20) years from and after the date of the recording of this Declaration, provided that rights and easements which are stated herein to have a longer duration shall have such longer duration. Upon the expiration of said twenty (20) year period, this Declaration shall be automatically renewed for successive ten (10) year periods. The number of ten (10) years periods shall be unlimited, with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration, if, during the last year of the initial twenty (20) year period or the last year of any ten (10) year renewal, seventy-five percent (75%) of the total votes of the Association are cast in favor of terminating this Declaration at the end of the ten current term. In the event that the Association votes to terminate this Declaration, an instrument evidencing such termination shall be filed of record in the Records of the Clerk of the Superior Court of Cobb County, Georgia, such instrument to contain a certificate wherein the President of the Association swears that such termination was duly adopted by the requisite number of votes.. Every purchaser or grantee of any interest in any real property subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that such provisions of the Declaration may be extended and renewed in this Section.

Section 3. Amendment. In addition to the foregoing, this Declaration may be amended unilaterally at any time and from time to time by Declarant prior to the Declarant relinquishing the right to appoint members of the Board of Directors of the Association; provided, however, that no such amendment may materially adversely affect the title to an Owner's Lot without such Owner's consent This Declaration may be further 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 his 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 the Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots subject to this Declaration, provided any such amendment shall not adversely affect the title to any Owner's Lot unless any such Lot Owner shall consent thereto in writing.

All amendments, other than those specified hereinabove shall be adopted as follows:

(a) As long as Declarant has not assigned its approval rights to the Association, the consent of Declarant and of at least fifty percent (50%) of the Lot Owners shall be necessary to amend this Declaration. After Declarant has assigned its approval rights to the Association, the consent of at least fifty percent (50%) of the Lot Owners shall be necessary to amend this Declaration. Notwithstanding anything to the contrary herein, it is expressly provided that any amendment which adversely affects the title to any Lot must be approved by the Owner of such Lot in writing.

(b) The proposed amendment may be proposed by either the Lot Owners or Declarant. The Declarant or the Association, as the case may be, may and shall be required to call such a meeting upon a petition signed by at least twenty-five percent (25%) of the Lot Owners. If a meeting of the Lot Owners is called to consider such an amendment, the time within which and the manner by which notice of such meeting shall be given, the authorized use of proxies, and the quorum required for the transaction of business at such meeting shall correspond to the requirements set forth by the Robert's Rule of Order.

(c) The consent of the Lot Owners required to approve said amendments shall be obtained by affirmative vote, written consent, or a combination thereof. A meeting of the Lot Owners shall not be required in the event that the requisite approval of the Lot Owners is obtained by written consent. The required consent of Declarant or the Person or Persons to which it has assigned its approval rights, as the case may be, shall be in writing.

(d) No amendment to the provisions of the Declaration shall materially alter, modify, change, or rescind any right, title, interest, or privilege herein granted or accorded to the holder of any Mortgage affecting any Lot unless such holder shall consent thereto in writing. The written consent thereto of any Mortgage holder affected thereby shall be filed with such amendment. Every purchaser or grantee of any interest in any real property now or hereafter subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that this Declaration may be amended as provided in this Section. No amendment shall become effective until filed with the Clerk of the Superior Court of Cobb County, Georgia.

Section 4. Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective.

Section 5. Gender and Grammar. The singular, whenever 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 6. 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 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. Perpetuities. If any of the 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 initial recording of this plat.

Section 9. Annexation and Future Development. For so long as Declarant has authority to appoint and remove Directors and Officers of the Association, additional real property may be annexed to the Community by the Declarant without the consent of the Owners or Association. Such annexation shall be accomplished by filing in the Office of the Clerk of the Superior Court of Cobb County an approved subdivision plat describing the real property to be annexed to the Property and by including on such subdivision plat a statement that expressly sets forth the Declarant's intention to make such annexed real property subject to the provisions of this Declaration or by the Owners of the real property to be annexed if such real property is owned by someone other than Declarant. At the expiration of Declarant's right to appoint and remove Directors and Officers of the Association, no real property may be annexed to the Property unless such annexation is approved by a two-thirds (2/3) vote of the Members of the Association who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the provisions of the By-Laws.

ARTICLE XII

MISCELLANEOUS

Section 1. No Reverter. No restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

Section 2. Severability. A determination by a court that any provision hereof is invalid for any reason shall not affect the validity of such other provision hereof.

Section 3. Headings. The headings of the Articles and Sections hereof are for convenience only and shall not affect the meaning or interpretation of the contents of this Declaration.

Section 4. Gender. Throughout this Declaration, the masculine gender shall be deemed to include feminine and neuter and the singular, the plural and vice versa.

Section 5. Notices. All amendments, notices, requests, objections, waivers, rejections, agreements, approvals, disclosures, or consent of any kind made pursuant to this Declaration, whether made by the Declarant, the Association, ARC, the Owner, or any other person, shall be in writing. All such writings shall be sufficient only if hand delivered or if deposited in the United States Mail, and sent to the following addresses:

(a) Declarant: McMurry & Associates, Inc.
409 Capri Drive
Hartwell, Georgia 30643

(b) Owners: Each Owner's address as registers with the Association in accordance with the Bylaws.

Any written communication transmitted in accordance with this Section 5 shall be deemed received when hand delivered or on the third (3rd) day following the day such written notice is deposited in the United States mail.

Section 6. No Liability. Declarant has, using best efforts and all due diligence, prepared and recorded this Declaration so that each and every Owner shall have the right and the power to enforce the terms and provisions of this Declaration against every other Owner. However, in the event that this Declaration is, for any reason whatsoever, unenforceable by an Owner (or any other person) in a court of law or otherwise, Declarant shall have no liability of any kind as a result of such unenforceability, and each and every Owner, by acceptance of a deed conveying a Lot, acknowledges that Declarant shall have no such liability.

The Association, by the execution hereof, acknowledges and agrees that the Association is hereby bound by all of the Association's obligations under this Declaration of Covenants, Restrictions and Easements.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this instrument under seal the _____ day of _____, 2018

MCMURTRY & ASSOCIATES, INC., a
Georgia corporation

By: _____
Benjamin Reed Morris, President

(CORPORATE SEAL)

Signed, sealed and delivered this
____ day of _____, 2018

Witness

Notary Public
My Commission Expires: _____

(NOTARY SEAL)

