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Anne M. Leland

DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS
FOR SMITHWICK CROSSING

RECORDED AT DEED BOOK _____, PAGE _____

CHEROKEE COUNTY, GEORGIA RECORDS

DECLARATION
OF COVENANTS, RESTRICTIONS AND EASEMENTS
FOR SMITHWICK CROSSING

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR SMITHWICK CROSSING is made this _____ day of November 2003, by SMITHWICK PARTNERS, LLC (hereinafter referred to as "Declarant").

BACKGROUND STATEMENT

Declarant is the owner of certain real property in Cherokee County Georgia, which has been developed as a single-family subdivision known as SMITHWICK CROSSING (hereinafter referred to as the "Development"), as more particularly described on Exhibit A attached hereto and made a part hereof.

Declarant intends by this Declaration to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within SMITHWICK CROSSING, the planned unit development made subject to this Declaration, by the recording of this Declaration and amendments thereto. Declarant also desires to establish a method for the administration, maintenance, preservation, use and enjoyment of the property that is now or hereafter subjected to this Declaration and certain other properties described in this Declaration.

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).

The Declarant hereby declares that all of the real property described above shall be held, sold and conveyed subject to this Declaration of Covenants, Restrictions and Easements, which is for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property (as hereinafter defined). The Covenants, Restrictions and Easements set forth herein shall run with the Property, and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, and shall, subject to the limitations herein provided, inure to the benefit of each Owner, his heirs, grantees, distributees, successors and assigns and to the benefit of The Association.

Prior to the recording of this Declaration, Declarant has sold certain of the Lots (as hereinafter defined), and the Owners of such Lots join in the execution of the Declaration for the purpose of subjecting such Lots to the Declaration.

ARTICLE I
DEFINITIONS

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

1.01 ASSOCIATION "Association" means SMITHWICK CROSSING Homeowners' Association, Inc. (a non-profit, non-stock, membership corporation organized under the Georgia Nonprofit Corporation Code), its successors and assigns.

1.02 BOARD "Board" means the Board of Directors of the Association

1.03 BUILDER "Builder" means any Person who purchases one or more Lots for the purpose of constructing a Residence thereon for later sale to consumers in the ordinary course of such Person's business.

1.04 BY-LAWS "By-Laws" means the By-Laws of the Association.

1.05 COMMENCEMENT DATE "Commencement Date" as to any Lot means the day the Residence on such Lot is sold by a Builder to a third party other than the Declarant .

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

1.07 DECLARANT "Declarant" means SNITHWICK PARTNERS, LLC, a Georgia Limited Liability Company and its successors-in-title and assigns, provided any such successors-in-title or assigns shall acquire for the purpose of sale all or any portion of the unsold portions of the real property described in Exhibit "A", and provided further, in the instrument of conveyance to any such 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" hereunder at the time of such conveyance; provided, further, upon such designation of successor Declarant, all rights and obligations of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the property described in Exhibit "A", attached hereto, and which is now or hereafter subjected to this Declaration, there shall be only one person or legal entity entitled to exercise the rights and powers of the "Declarant" hereunder at any one time.

1.08 DEVELOPMENT-WIDE STANDARD "Development-Wide Standard" shall mean the standard of conduct, maintenance or other activity generally prevailing in the Development. Such standard may be more specifically determined by the Board and by committees required or permitted to be established pursuant to the Declaration and By-Laws. Such determination, however, must be consistent with the Development-Wide Standard originally established by the Declarant.

1.09 LOT "Lot" means any parcel of land shown upon the subdivision plat recorded in the Office of the Clerk of the Superior Court of Cherokee County, described on Exhibit A attached hereto, covering any portion of the Property, provided, however, that no portion of the Common Property shall ever be a Lot.

1.10 MEMBER "Member" means any member of the Association.

1.11 MEMBERSHIP "Membership" means the collective total of all Members of the Association.

1.12 OCCUPANT "Occupant" shall mean any person occupying all or any portion of a Lot located within the Development for any period of time, regardless of whether such Person is a tenant or the Owner of such property.

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

1.14 PERSON "Person" means a human being, corporation, partnership, trustee or other legal entity.

1.15 PROPERTY "Property" means that certain real property hereinabove described.

1.16 RESIDENCE "Residence" shall mean a structure situated upon a Lot intended for independent use and occupancy as a residence for a single family. A structure and the land owned as a part thereof (the Lot) shall not become a Residence until a certificate of occupancy shall have been issued by the appropriate governmental authorities as a pre-requisite to the occupancy of such Residence and until the Lot and structure located thereon shall have been conveyed to a third party other than the builder thereof. The Owner of a Residence shall notify the Association or its designee immediately upon issuance of a Certificate of Occupancy for the Residence.

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

1.18 STRUCTURE "Structure" means:

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

(b) any excavation, grading, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial creek, stream, wash or drainage channel from, upon or across any Lot; and

(c) any change in the grade at any point on a Lot of more than six (6) inches, whether or not subsection (b) of this Section 1.17 applies to such change.

ARTICLE II COMMON PROPERTY

2.01 CONVEYANCE OF COMMON PROPERTY

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

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

(c) 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.

(d) Lakes, dams and detention ponds shall, without limitation, be included in the property that may be conveyed by Declarant and which shall be accepted by the Association. Declarant shall not be required to make any improvements whatsoever to the property to be conveyed and accepted pursuant to this Section including, without limitation, dredging or otherwise removing silt from any lake or detention pond that may be conveyed. Nothing herein shall be construed to make Declarant or the Association liable for damages resulting from flooding due to heavy rainfall or other natural occurrences.

2.02 RIGHT OF ENJOYMENT Every Owner of a Residence shall have a right and easement to use and enjoy the Common Property, which right shall be appurtenant to and shall pass with the title to every Lot upon transfer; provided, however, that no Owner shall do any act which interferes with the free use and enjoyment of the Common Property by all other Owners. The Association may permit persons who are not Owners of Residences to use and enjoy part or all of the Common Property subject to such limitations, and upon such terms and conditions, as it may from time to time establish. The right and easement of enjoyment granted or permitted by this Section 2.02 is subject to suspension by the Association as provided in Sections 2.03(f) and 3.05.

2.03 RIGHTS OF THE ASSOCIATION. The rights and privileges conferred in Section 2.02 hereof shall be subject to the right, and where applicable, the obligation, of the Association acting through the Board to:

- (a) promulgate rules and regulations relating to the use, operation and maintenance of the Common Property;
- (b) borrow money for the purpose of carrying out the activities of the Association, including the acquisition, construction, improvement, equipping and maintenance of Common Property, and in aid thereof to encumber by deed to secure debt, mortgage or other security interest any or all of the Association's property including Common Property and revenues from assessments, user fees and other sources;
- (c) grant easements or rights of way over Common Property to any municipality or other governmental body, agency or authority, to any quasi-public agency or to any utility

company or cable television system;

- (d) dedicate or transfer all or any part of the Common Property or interests therein to any municipality or other governmental body, agency or authority for such purposes and subject to such provisions and conditions as may be agreed upon by the Association and such grantee, including a provision that such property or interest shall, if such dedication or transfer is approved by 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 and by the Declarant so long as Declarant has the right to appoint and remove members of the Board and officers 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) suspend, pursuant to Section 3.05, the voting rights of any Member and the right of enjoyment granted or permitted by Section 2.02;
- (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 or any part thereof; and
- (h) maintain any and all landscaping treatments previously installed by the Declarant, to the extent that such landscaping is not otherwise maintained by the appropriate county and/or municipal entity having jurisdiction over the roads for Cherokee County, Georgia.

2.04 CONVEYANCE OF COMMON PROPERTY BY DECLARANT TO ASSOCIATION. The Declarant may transfer or convey to the Association any personal property and any improved or unimproved property, leasehold, easement or other property interest which is or may be subjected to the terms of this Declaration. Such conveyance shall be accepted by the Association, and the property shall thereafter be Common Property to be maintained by the Association for the benefit of all of its Members. Notwithstanding the foregoing, such conveyance shall be made subject to the right of the Declarant to make adjustments in the boundary lines of the Common Property deemed reasonably necessary by Declarant, and the deed of conveyance of the Common Property shall so provide.

2.05 MAINTENANCE The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair and replacement of all landscaping and improvements situated on the Common Property. In addition, the Association shall maintain grass and other landscaping located along or in dedicated rights of way, which were installed and maintained by Declarant, to the extent permitted by the applicable governmental authority. The foregoing maintenance shall be performed consistent with the Development-Wide Standard.

ARTICLE III **SMITHWICK CROSSING HOMEOWNERS' ASSOCIATION, INC.**

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

3.02 MEMBERSHIP IN THE ASSOCIATION. Every Owner shall automatically be a member of the Association and such membership shall terminate only as provided in this Declaration of Covenants, Restrictions and Easements. For purposes of voting, there shall be two (2) classes of Members as set forth in Section 3.03.

3.03 VOTING RIGHTS.

(a) Each Owner, with the exception of Declarant, shall be a Class A Member and shall be entitled to one (1) Class A vote per Lot. Where such Owner is a group or entity other than one individual person, the vote on behalf of such Owner shall be exercised only by such individual person as shall be designated in a proxy instrument duly executed by or on behalf of such group or entity and delivered to the secretary of the Association.

(b) The Declarant shall be the sole Class B Member and shall be entitled to two (2) votes for each Lot Owned; provided, however, in no event shall the Class B Member have less than the total number of Class A votes plus one (1). The Class B Membership shall cease and be converted to Class A Membership at such time as Declarant no longer retains the right to appoint and remove members of the Board and officers of the Association pursuant to Section 3.08 below.

3.04 BOARD OF DIRECTORS. A Board of Directors shall manage the affairs of the Association. The number of Directors and the method of election of Directors shall be as set forth in the By-Laws of the Association.

3.05 SUSPENSION OF MEMBERSHIP. The Board may suspend the voting rights of any Member and the right of enjoyment of the Common Property of any person who:

- (a) shall be delinquent in the payment of any assessment levied by the Association pursuant to the provisions of Article IV hereof; or
- (b) shall be in violation of the rules and regulations of the Association relating to the use, operation and maintenance of Common Property. 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, except that in the case of a violation described in subsection (c) of this Section 3.05, the suspension may be for a period not to exceed 60 days after the cure or termination of such violation. No such suspension shall prevent an Owner's ingress to or egress from his Lot.

3.06 TERMINATION OF MEMBERSHIP. Membership shall cease only when a person ceases to be an Owner.

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

3.08 CONTROL BY DECLARANT.

- (a) Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the Bylaws of the Association, Declarant hereby retains the right to appoint and remove any members of the Board of the Association and any officer or officers of the Association until 15 days after 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 intended by Declarant to be a part of the Development have been conveyed to Owners other than a person or persons constituting Declarant; 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.
- (b) 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 contacts executed by or on behalf of the Association during such period which Declarant has in its possession. Each Owner by acceptance of a deed to or other conveyances of a Lot vests in

Declarant such authority to appoint and 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 to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

3.09. MONITORING SERVICES. The Association may, but shall not be obligated to, maintain or support or contract for the provision of monitoring services within the Development. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety within the Development, nor shall either of them be held liable for any loss or damage by reason of failure to provide adequate monitoring services or of ineffectiveness of any such measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other monitoring system or measure can not be compromised or circumvented, nor that any such system or measure undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges and understands, and covenants to inform its tenants, that the Association, its Board of Directors and committees and Declarant, are not insurers of safety and that each person using the Development assumes all risks of personal injury, death, and loss or damage to property, including Residences and the contents of Residences, resulting from acts of third parties.

3.10 INDEMNIFICATION The Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees, reasonably incurred 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 he or she may be a party by reason of being or having been an officer, director, or committee member, to the fullest extent allowed by law.

ARTICLE IV ASSESSMENTS

4.01 COVENANT FOR ASSESSMENTS AND CREATION OF LIEN AND PERSONAL OBLIGATION. Each Owner of a Lot, jointly and severally, for himself, his heirs, distributees, legal representatives, successors and assigns, by acceptance of a deed for a Lot, whether or not the covenants contained herein shall be expressed in any such deed, hereby covenants and agrees as follows:

- (a) to pay to the Association the annual assessments, which may or shall be levied by the Association pursuant to this Declaration against all Lots owned by him;
- (b) to pay to the Association any special assessments for capital improvements and other charges, which may or shall be levied by the Association pursuant to this Declaration against all Lots owned by him;
- (c) to pay to the Association any specific assessments for capital improvements including Capital Contribution Assessments and other charges, which may or shall be levied by the Association pursuant to this Declaration against any or all Lots owned by him;
- (d) that there is hereby created a continuing charge and lien upon all Lots owned by him against which all such assessments are made to secure payment of such assessments and any interest thereon as provided in Section 4.09 hereof and costs of collection including reasonable attorneys' fees;
- (e) that such continuing charge and lien on such Lot binds such Lot in the hands of the then Owner, and the Owner's grantees, 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 by the Owner (1) to purchase a Lot or Lots (together with any and all Structures which may from time to time be placed or located thereon) and (2) to finance the construction repair or alteration of Structures.
- (f) that no sale or transfer at foreclosure or in lieu of foreclosure shall relieve any Lot from liability for any assessment thereafter assessed;
- (g) that all annual, special and specific assessments (together with interest thereon as provided in Section 4.09 of this Declaration and costs of collection including reasonable attorneys' fees) levied against

any Lot 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 as provided in Section 4.01(d) of this Declaration) a personal obligation which will survive any sale or transfer of the Lot owned by him; provided, however, that such personal obligation for delinquent assessments shall not pass to an Owner's successor in title unless expressly assumed by such successor.

4.02 PURPOSE OF ASSESSMENT The assessments levied by the Association shall be used exclusively for the purpose of providing for the common good and general welfare of the people of the new community of the Development, including, but not limited to, the acquisition, construction, improvement, operation, maintenance and equipping of Common Property, the enforcement of the Restrictions contained in this Declaration, the enforcement of the Design Standards of the ACC, the payment of operating costs and expenses of the Association and the payment of all principal and interest when due on all debts owed by the Association.

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

4.04 ANNUAL ASSESSMENT

(a) Beginning on the Commencement Date applicable to each Lot shall be subject to an annual assessment of three hundred five and 00/100 dollars (\$ 305.00) Dollars per Lot. 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. For so long as Declarant owns a Lot, the annual assessment shall not be reduced below \$ 305.00 without the express written consent of Declarant.

(b) After the first Assessment Year the amount of the annual assessment shall be determined pursuant to Section 4.06 below.

(c) Initial Capital Contribution Upon Transfer of Lots. In addition to the annual and special assessments provided for above, all Lots shall be assessed and be subject to a non-refundable capital contribution in the amount of \$200.00 ("Capital Contribution Assessment") upon any and each conveyance of transfer of the Lot to any person other than the spouse of the Owner. This Capital Contribution Assessment shall apply to all re-sales of Lots and the initial conveyance of a Lot to a third party by a Builder. The Capital Contribution Assessment shall be due and payable at the time of such conveyance or transfer. The Capital Contribution Assessment shall constitute a specific assessment and continuing lien against such Lot, and a personal obligation of the Owner of such Lot, from the time it is due until it is paid in full. Capital Contribution Assessments may be collected by the Association in the same manner as any other unpaid assessment.

4.05 SPECIAL ASSESSMENTS

(a) In addition to the initial capital contribution and annual assessments authorized by this Article IV, the Association may levy, in any Assessment Year and with such frequency as the Association shall deem necessary, special assessments for the purpose of paying, in whole or in part, any unanticipated operating expenses, as well as the cost of any construction, reconstruction, repair or replacement of a capital improvement on the Common Property. Such special assessments may be levied by the Board in any Assessment Year without the approval of the members, which special assessments in the aggregate do not exceed an amount equal to the annual assessment then in effect. Special assessments exceeding said amount shall require the approval of two-thirds (2/3) of the Members of the Association who are present in person or by proxy at a meeting of Members duly held in accordance with the provisions of the By-Laws of the Association and this Declaration.

(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 and Section 4.05 (a). 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 one-third (1/3) 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 subject to the same notice requirement, and the required quorum at such second meeting shall be twenty-five percent (25%) of the total votes outstanding. No such second meeting shall be held more than sixty (60) days following the first meeting. If the required quorum is not present at the second meeting, the Board may take such action without approval of the Members.

4.06 Assessment Procedure

(a) The Board shall establish the annual assessment for each Assessment Year at an amount as determined by the provisions of this Article IV, and shall also establish the date during the Assessment Year on which the annual assessment shall be due and payable (such date is hereinafter referred to as the 'Due Date'). The Board shall also establish an annual budget which shall list the estimated operating expenses and shall contain an amount to be set aside each year into a reserve allowance to be used for future repair and replacement of the Common Property; provided, however, in no event shall the Board be required to provide for a reserve sufficient to cover all such future repair and replacement of the Common Property, it being intended that a portion of such costs may be covered by Special Assessment. The Board shall cause the Association to send to each Owner at least thirty (30) days in advance of the effective date of the budget, a copy of the budget and a written notice setting forth the amount of the annual assessment and the Due Date. After Declarant no longer has the right to appoint or remove members of the Board and officers of the Association, such budget and assessment shall become effective unless disapproved at a meeting by Members representing at least 75% of the total votes in the Association. If the budget proves inadequate for any reason, the Board may prepare a revised budget for the remainder of the fiscal year, which revised budget shall become effective unless disapproved at a meeting by Members in the same manner as prescribed for the initial budget. There shall be no obligation to call a meeting for the purpose of considering the budget or any revised budget except on petition of the Members as required for special meetings in the By-Laws, which petition must be presented to the Board within 10 days after delivery of the notice of assessments.

If a budget is not adopted for any year, then until such time as a budget is adopted, the budget in effect for the immediately preceding year shall continue for the current year.

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 IV.

4.07 Uniform Rate of Assessment Both annual and special assessments must be fixed at a uniform rate for all Lots.

4.08 Declarant's Obligation for Assessments Declarant may annually elect either to pay regular assessments on all of its unsold Lots, notwithstanding the Commencement Date for assessments set forth in Section 4.04 (a), or to pay the difference between the amount of assessments collected on all Lots subject to assessment and the amount of actual expenditures by the Association during the fiscal year (but specifically not including an allocation for the reserve allowance). The Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of service or materials, or by a combination of these. To the extent that Declarant contributes payments beyond that which would be required if Declarant elected to pay regular annual assessments, such amounts shall be treated as a loan to the Association. The terms of such loan shall include interest at the Applicable Federal Rate as indicated in the tables published pursuant to Internal Revenue Code Section 1274, and payment in full shall be due upon demand at any time after one year following the date on which Declarant no longer has the right to appoint or remove members of the Board and officers of the Association.

4.09 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 the highest legal rate of interest which can be charged or 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 portion of any assessment prior to the date on which payment is due, such unpaid portion (including any remaining balance declared immediately due and payable in accordance with the preceding sentence), together with interest and costs of collection including reasonable attorneys' fees, shall be a binding personal obligation of such Owner, as well as a lien on such Owner's Lot enforceable in accordance with the provisions of this

Declaration.

4.10 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 stake 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.

4.11 Approval of Declarant Notwithstanding anything to the contrary contained herein, no special assessment shall be made without the Approval of Declarant for so long as Declarant owns a Lot.

4.12 Specific Assessments The Board shall have the power to specifically assess any one or more Lots pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to exercise its authority Under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. The Board may specifically assess Owners for the following expenses, except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association as provided herein:

- (a) Expenses of the Association which benefit less than all of the Lots, which may be specifically assessed equitably among all of the Lots which are benefited according to the benefit received,
- (b) Expenses incurred by the Association pursuant to Section 6.14 hereof for the Lots being assessed; and
- (c) Reasonable fines as may be imposed in accordance with the terms of the Declaration and By-Laws.

ARTICLE V
ARCHITECTURAL CONTROL

5.01 General No structure (including but not limited to, buildings, signs, walls, and mailboxes) shall be placed, erected, or installed upon any Lot, and no improvements (including staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements, and planting or removal of landscaping materials) shall take place except in compliance with this Article. Notwithstanding this, the Board may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution. Further, the Declarant, in its discretion, may exempt certain designees, including but not limited to, certain builders, from any or all of the requirements of this Article for original construction, provided such designees are contractually obligated to comply with design review restrictions imposed by Declarant

Any Owner may remodel, paint or redecorate the interior of structure(s) of a Unit without approval provided such improvements are not visible from outside such structure(s). Modification to the interior of screen patches, patios, and similar portions of a Residence visible from outside the Residence shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect or licensed building designer, and shall comply with all applicable codes and ordinances, the subdivision pint for the Development and this Declaration.

5.02 - ARCHITECTURAL CONTROL COMMITTEE-CREATION AND COMPOSITION An Architectural Control Committee (the "ACC") shall mean and refer to the Declarant, or such other individuals as the Declarant may appoint, or such entity to which the ACC may assign its duties, until permanent improvements have been constructed on all of the Lots and sold to third parties. After such time the ACC shall be those Owners elected

by a Majority of all Owners in the Development pursuant to rules established by a Majority vote of the Owners. All costs of operating the ACC, may, at the discretion of Declarant, be borne by the Association.

5.03 PURPOSE, POWERS, AND DUTIES OF THE ACC The purpose of the ACC is to assure that any installation, construction or alteration of any Structure on any Lot shall be submitted to the ACC 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 of the Development, and (ii) as to the location of Structures with respect to topography, finished ground elevation and surrounding Structures. To the extent necessary to carry out such purpose, the ACC shall have all of the powers and duties to do each and every thing necessary, suitable, convenient or proper for, or in connection with, or incidental to, the accomplishment of such purpose, including, without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any Structure on any Lot.

5.04 DESIGN STANDARDS.

(a) The ACC shall from time to time adopt promulgate, amend, revoke and enforce guidelines (the "Design Standards") for the purposes of establishing guidelines with respect to the approval and disapproval of design features, architectural styles, exterior colors and materials, details of construction, location and size of Structures and all other matters that require approval by the ACC pursuant to this Declaration. As of the date of this Declaration, the Design Standards include the following requirements:

- (i) All Lots will be restricted to permanent single family housing of a minimum of 1,500 square feet of heated floor area for a ranch-style or split foyer, and a minimum of 1,600 square feet heated floor area for a two-story house. The foregoing square footage is exclusive of areas contained in open porches, carports, garages, and unfinished basements.
- (ii) Whenever buildings or retaining walls erected on any Lot are constructed in whole or in part of concrete, concrete blocks, cinder blocks or other fabricated masonry units, such blocks or other prefabricated masonry units shall be painted to blend with house exterior colors or be veneered in a natural stone, stucco or brick or other approved material over the entire surface exposed above finished grade, on any side from the road unless otherwise approved by the ACC. Exterior finish materials must be approved by the ACC and shall be earth tones, unless otherwise approved by the ACC.
- (iii) Nothing shall be erected, placed or altered on any Lot nearer to any street than building set back lines unless the same be retaining walls of masonry construction or railroad ties which do not rise above finished grade elevation of the earth embankments so retained, reinforced or stabilized, unless otherwise approved by the ACC. The exposed part of any retaining wall shall be made of an approved veneer in accordance with Section 5.04(a)(ii) above.

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

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

- (a) a site plan showing the location of all proposed and existing Structures on the Lot including building setbacks, open space, driveways, walkways and parking spaces including the number thereof and all siltation and erosion control measures;
- (b) a foundation plan;
- (c) a floor plan;
- (d) exterior elevations of all proposed Structures and alterations to existing Structures as such Structures 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 Structures and alterations to existing Structures; and
- (f) plans for landscaping and grading.

5.06 Violations. If any Structure shall be erected, placed, maintained or altered upon any Lot otherwise than in accordance with the plans and specifications approved by the ACC, pursuant to the provisions of this Article, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If in the opinion of the ACC such violation shall have occurred, the ACC shall notify the Association and the Board shall take appropriate measures to correct the violation, 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.

5.07 Certification of Compliance

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

(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 encumbrancer in good faith and for value, or as to any title insurer, such certificate shall be conclusive evidence that all Structures on the Lot comply with all the requirements of this Article, provided, however, that the Certificate shall in no way be construed to certify the acceptability, sufficiency or approval by the ACC of the actual construction of Structures or of the workmanship, or to represent or warrant to anyone the value, quality, function or operation of the Structures or of any construction, workmanship, engineering, materials or equipment

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

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

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

5.10 Variance The ACC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing (b) be contrary to this Declaration or (c) estop the ACC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit or the terms of any financing shall not be considered a hardship

warranting a variance. Notwithstanding the above, the Image Committee may not authorize variances without the written consent of the Declarant, as long as Declarant owns any portion of the Property.

ARTICLE VI
GENERAL COVENANTS AND RESTRICTIONS

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

6.02 Restriction of Use Lots may be used for single-family residences only and for no other purpose; provided that Declarant and its designees may operate a Sales/Management Office trailer and/or Model Home on a Lot or Lots designated Declarant.

6.03 Resubdivision of Property No Lot may be split divided, or subdivided for sale, resale, gift, transfer, or otherwise, without the prior written approval of the ACC of plans and specifications for such split, division or subdivision. Notwithstanding the foregoing, nothing herein shall prevent Declarant or the Owners of any Lots from combining two or more Lots into one Lot for construction of a single Lot thereon provided, however, that such combined Lot may not be subdivided thereafter, and, provided further that the Owner of The Lot on such Lot shall be responsible for annual and special assessments based upon the number of Lots combined into one Lot.

6.04 Erosion Control No activity which may create erosion or siltation problems shall be undertaken on any Lot without the prior written approval of the ACC of plans and specifications for the prevention and control of such erosion or siltation. The ACC may as a condition of approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include (by way of example and not of limitation) physical devices for controlling the run-off and drainage of water, special precautions in grading and otherwise changing the natural landscape and required landscaping as provided for in Section 6.05. Guidelines for the prevention and control of erosion and siltation may be included in the Design Standards of the ACC.

6.05 Landscaping No construction or alteration of any Structure shall take place without the prior written approval by the ACC of plans and specifications for the landscaping to accompany such construction or alteration. Guidelines for the landscaping to accompany the construction or alteration of any Structure may be included in the Development Guidelines of the ACC.

6.06 Trees. No tree having a diameter of three (3) inches or more (measured from a point two (2) feet above ground level) shall be removed from any Lot (except with respect to the removal and replacement of dead or diseased trees) unless such removal is in conformity with approved landscaping plans and specifications submitted pursuant to the provisions of Section 6.05 hereof Guidelines relating to the preservation of trees and other natural resources and wildlife upon the Property may be included in the Design Standards of the ACC.

6.07 Temporary Buildings No temporary building, trailer, garage or building under construction shall be used, temporarily or permanently, as a residence on any Lot except as temporary sleeping or living quarters required or desirable for security purposes in accordance with plans and specifications therefore approved by the ACC. No contractor or builder shall erect on any Lot any temporary building or shed for use in connection with construction on such Lot; provided, however that Declarant shall have the right, so long as Declarant owns any of the Property, to operate a temporary construction trailer on any Lot designated by Declarant.

6.08 Signs.

(a) No signs whatsoever (including but not limited to commercial and similar signs) shall, without the ACC's prior written approval of plans and specifications therefore, be installed, altered or maintained on any Lot, or on any portion of a Structure visible from the exterior thereof, except:

(i) such signs as may be required by legal proceedings;

a. not more than one "For Sale" sign, such sign having a maximum face area of four

square feet; provided that such sign may only be displayed in the front yard of a Lot and, provided, further that if, at the time of any desired use of such sign, the Association is making "For Sale" signs available for the use Owners, the signs made available by the Association must be used;

(iii) directional signs for vehicular or pedestrian safety in accordance with plans and specifications approved by the ACC and

(iv) for rent signs are strictly prohibited.

(1) In no event during approved construction of any Structure shall more than one job identification be approved by the ACC.

6.09 Setbacks. In approving plans and specifications for any proposed Structure, the ACC may establish setback requirements for the location of such Structure. Guidelines for setbacks may be included in the Design Standards of the ACC. No Structure shall be erected or placed on any Lot unless its location is consistent with such setbacks.

6.10 Fences. No fence or wall of any kind shall be erected, maintained, or altered on any Lot without the prior written approval of the ACC of plans and specifications for such fences and walls. Fences shall not be placed on the lot any further forward than the rear corners of the house and the portion facing the street shall be an approved wooden fence (no chain link fences), the remaining portion of the fence may be chain link provided it is vinyl coated in a black or dark green color. Guidelines relating to the design, location and uses of fences and walls may be included in the Design Standards of the ACC.

6.11 Roads and Driveways No road or driveway shall be constructed or altered on any Lot without the prior written approval of the ACC of plans and specifications for such roads and driveways. Guidelines relating to the design and location of roads and driveways may be included in the Design Standards of the ACC.

6.12 Antennae, Etc. No exterior television or radio antennae or satellite dish more than 24 inches in diameter or receiver or solar equipment of any sort shall be placed, allowed or maintained upon any portion of a Structure or Lot without prior written approval by the ACC. No antennae shall be installed or used for the purpose of transmitting of electronic signals.

6.13 Clotheslines, Garbage Cans, Etc. No clotheslines shall be allowed on any Lot (except inside a Residence), and equipment, garbage cans and woodpiles shall be kept screened by adequate planting or fencing so as to conceal them from view by neighboring residences and streets and may be maintained in the rear yard on a Lot only.

6.14 Maintenance. Each Owner shall keep and maintain each Lot and Structure owned by him, as well as all landscaping located thereon, in good condition and repair, including, but not limited to (i) the repairing and painting (or other appropriate external care) of all Structures; (ii) the seeding, watering and mowing of all lawns; and (iii) the pruning and trimming of all trees, hedges, and shrubbery so that the same are not obstructive of a view by motorists or pedestrians of street traffic. Notwithstanding the foregoing, the maintenance required hereunder shall also extend from the boundary of a Lot to the curbing of the right-of-way bordering said Lot, and shall also include easements located on the Lot, including, but not limited to swales and ditches. If in the opinion of the ACC, any Owner shall fail to perform the duties imposed by this Section, the ACC shall notify the Association. If the Board shall agree with the determination of the ACC with respect to the failure of said Owner to perform the duties imposed by this Section, then the Board shall give written notice to the Owner to remedy the condition in question, setting forth in reasonable detail the nature of the condition and the specific action or actions needed to be taken to remedy such condition. If the Owner shall fail to take reasonable steps to remedy the condition within thirty (30) days

after the mailing of said written notice by certified mail, then the Association shall have the right of perform such maintenance on behalf of such Owner and the cost thereof shall be a Special Assessment against such Owner.

6.15 Commercial and Recreational Vehicles and Trailers No commercial vehicle, house Trailer, mobile home, motor home, recreational vehicle, camper, truck with camper top, boat or boat trailer or like equipment shall be permitted on any Lot on a permanent basis, but shall be allowed on a temporary basis not to exceed forty-eight (48) consecutive hours. Notwithstanding the foregoing, any such vehicles or equipment may be stored on a Lot, provided such vehicle or equipment is kept in an enclosed space and is concealed from view by neighboring residences and streets.

6.16 Recreational Equipment, Etc. Mailboxes and all exterior recreational equipment (including, but not limited to basketball hoops, swing sets and similar sports and play equipment) and any yard ornaments, animal pens, dog runs, flags or other exterior fixtures shall comply with the Design Standards or otherwise be subject to approval by the ACC. Recreational and playground equipment shall be placed or installed only upon the rear of a Lot as approved by the ACC: Basketball goals may be placed adjacent to the driveway. No above ground pool shall be allowed.

6.17 Animals. No agricultural animals may be kept on any Lot and no animals, including birds, insects, and reptiles, may be kept on any Lot unless kept thereon solely as household pets and not for commercial purposes. No animal shall be allowed to become a nuisance. No Structure for the care, housing or confinement of any animal shall be constructed, placed or altered on any Lot unless plans and specifications for said Structure have been approved by the ACC.

6.18 Solid Waste.

(a) No person shall dump rubbish, garbage, or any other form of solid waste on any Lot or on Common Property.

(b) Except during approved construction and as approved by the appropriate governmental authority, no person shall burn rubbish, garbage, or any other form of solid waste on any Lot or on Common Property;

(c) Except for building materials employed during the course of construction of any Structure approved by the ACC, no lumber, metals, bulk materials or solid waste of any kind shall be kept, stored, or allowed to accumulate on any Lot unless screened or otherwise handled in a manner set forth in the Design Standards.

(d) If rubbish, garbage, or any other form of solid waste is to be disposed of by being collected on a regular and recurring basis, containers maybe placed in the open on any day that a pick-up is to be made, in order to provide access to persons making such pick-up. At all other times such containers shall be screened or enclosed in a manner set forth in the Design Standards. Guidelines relating to the type of containers permitted, the manner of storage and the place of pick-up may also be included in the Design Standards.

6.19 Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereof which may be or may become any annoyance or nuisance to the community.

6.20 Religious and Holiday Displays. Owners shall have the right to display religious and holiday signs, symbols, and decorations inside or outside of Residences of the kinds normally displayed in residences located in single-family residential neighborhoods, except that the Association may adopt reasonable time, place, and manner restrictions on displays visible from the outdoors for the purpose of minimizing damage and disturbance to other Owners and occupants

6.21 Activities Within Residences The Board shall have the right to adopt reasonable rules which prohibit activities within the confines of Residences not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Residences, that generate excessive noise or traffic, that create unsightly conditions visible outside the Residence, or That create an unreasonable source of annoyance.

ARTICLE VII
EASEMENTS, ZONING, AND OTHER RESTRICTIONS:
OTHER RESERVED RIGHTS TO DECLARANT

7.01 Easements.

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

- (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) the erection, installation, construction and maintenance of storm-water drains, land drains, public and private sewers, irrigation systems, pipelines for supplying gas, water and heat, and for any other public or quasi-public facility, service or function;
- (iii) slope control purposes, including the right to grade and plant slopes and prevent the doing of any activity which might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow,
- (iv) the planting or re-planting of hedges, shrubbery, bushes, trees, flowers and plants of any nature; and
- (v) such other purposes which are convenient or necessary for the use and operation of property by Declarant, as long as such action does not hamper the enjoyment of the Development, as built or expanded, by the Owners.

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

7.02 Easement Area. The words "Easement Area" as used herein shall mean those areas on any Lot or any other portion of the Property with respect to which easements are shown on a recorded deed, easement agreement or on any filed or recorded map or plat relating thereto. All conveyances of Lots hereafter made, whether by Declarant or otherwise, will be construed to grant and reserve the easements contained in this Article, even though no specific reference to such easements or to this Article appears in the instrument for such conveyance.

7.03 Entry The Declarant and its employees, agents, successors and assigns, shall have the right at all reasonable times to enter upon all parts of each Easement Area for any of the purposes for which such Easement Area is reserved, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and the carrying out of such purposes, provided the same are done in accordance with the provisions of this Section. The Declarant and its employees, agents, successors and assigns shall be responsible for leaving each Lot in good condition and repair following any work or activity undertaken in an Easement Area pursuant to the provisions of Section 7.01.

7.04 Drainage Easement. Notwithstanding the provisions of Sections 7.01 and 7.02 to the contrary, an easement is hereby reserved to Declarant for itself and its successors and assigns and granted to the Association, its officers, agents, employees, successors and assigns to enter upon, across, over, in, and under any portion of the Property for the purpose of changing, correcting, or otherwise modifying the grade or drainage channels of the Property so as to improve the drainage of water. Reasonable efforts will be made to use this easement so as not to disturb the uses of the Owners, the Association and Declarant, as applicable, to the extent possible; to prosecute such drainage work promptly and expeditiously; and to restore any areas affected by such work to a slightly and usable condition as soon as reasonably possible following such work Declarant, or its officers, agents, employees, successors and assigns must inform and obtain the approval of the Board prior to undertaking such drainage work, which approval will not be unreasonably withheld.

7.05 Easements of Encroachment There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common area and between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with The terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and

knowing conduct on the part of, or with the knowledge and consent of an Owner; occupant, or the Association.

7.06 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 Declaration, the most restrictive provision shall govern and control.

ARTICLE VIII ENFORCEMENT

Any Owner of a Lot in the Property, the Association, or the Declarant may enforce the covenants and restrictions contained herein by proceeding at law or in equity against any person or persons or entity violating or attempting to violate any covenant or restriction either by seeking to restrain such violation or seeking damages. Neither any Owner nor Declarant is under any duty to seek enforcement of any of these covenants as set forth herein. The failure of Declarant the Association or any Owner to enforce any of the covenants and restrictions shall in no event be deemed a waiver of the right to do so thereafter.

ARTICLE IX DURATION AND AMENDMENT; RIGHTS OF DECLARANT

9.01 Duration. This Declaration and the Restrictions contained herein shall run with and bind the Property for a period of twenty (20) years from and after the date when this Declaration is filed for record with the Clerk of the Superior Court of Cherokee County, Georgia, after which time this Declaration and the Restrictions shall be automatically renewed for successive periods often (10) years provided, however, that after the end of the said twenty (20) year period and during any ten (10) year renewal period (but only during such renewal period), this Declaration and the Restrictions contained herein may be terminated by an instrument executed by the proper Association officers and recorded in the office of the Clerk of the Superior Court of Cherokee County, Georgia, or in such other place of recording as may be appropriate at the time of the execution of such instrument, pursuant to a resolution approving such termination which is approved by a two-thirds (2/3) vote of those Class A 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 of the Association.

9.02 Amendment by Declarant. During any period in which Declarant retains the right to appoint and remove any directors and officers of the Association, Declarant may amend this Declaration by an instrument in writing filed and recorded in the Land Records of the Superior Court of Cherokee County, Georgia, without the approval of any Member or mortgagee; provided, however, that (i) in the event that such amendment materially alters or changes any Owners right to the use and enjoyment of such Owner's Lot or of the Common Property as set forth in this Declaration or if such amendment adversely affects the title to any Lot, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Members affected Thereby, or (ii) in the event that such amendment would materially and adversely affect the security, title or interest of any mortgagee, such amendment shall be valid only upon the written consent thereto of all such mortgagees so affected. Any amendment made pursuant to this Section 9.02 shall be certified by Declarant as having been duly approved by Declarant, and such Members and mortgagees if required, and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself. Each Owner, by acceptance of a deed or other conveyance to a Lot, agrees to be bound by such amendments as are permitted by this Section 9.02 and further consents to the amendment of this Declaration or any other amendments relating to the Development (i) if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots subject to this Declaration, (iii) if such amendment is required

by an institutional or governmental lender, purchaser or guarantor 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 any Lot subject to this Declaration, (iv) if any 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 or (v) if such amendment is necessary to correct a scrivener's error in the drafting of this Declaration.

9.03 Amendment by Association. Amendments to this Declaration, other than those authorized by Section 9.02 hereof, shall be proposed and adopted in the following manner:

(a) Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Association at which such proposed amendment is to be considered and shall be delivered to each member of the Association.

(b) At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board or by Members of the Association. Such amendment must be approved by Members holding at least two-thirds (2/3) of the total votes in the Association provided, however (i) that any amendment which materially and adversely affects the security title and interest of any mortgagee must be approved by such mortgagee and (ii) during any period in which Declarant has the right to appoint and remove officers and directors of the Association, such amendment must be approved by Declarant.

(c) The agreement of the required percentage of the Owners and, where required, the Declarant and any mortgagee, to any amendment of this Declaration shall be evidenced by their execution of such amendment, or, in the alternative, and provided that Declarant does not then have the right to approve such amendment, the sworn statement of the President and any Vice President or the Secretary of the Association attached to or incorporated in the amendment executed by the Association, which sworn statement shall state unequivocally that the Agreement of the required parties was lawfully obtained. Any such amendment of this Declaration shall become effective only when recorded or at such later date as may be specified in the Amendment itself.

9.04 Declarant's Rights. So long as Declarant continues to have rights under this Section, no person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Property without Declarant's written consent. Any attempted recordation without compliance herewith shall result in such instrument being void unless a Consent of Declarant is subsequently recorded in the public records.

The provisions of this Article may not be amended without the express written consent of Declarant, until Declarant no longer owns any of the Property.

ARTICLE X MISCELLANEOUS

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

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

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

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

10.05 Notices. All amendments, notices, requests, objections, waivers, rejections, agreements, approvals, disclosures or consent of any kind made pursuant in this Declaration, whether made by the Declarant, the

Association, the ACC, the Owner, or any other person shall be in writing. All such writings shall be sufficient only if deposited in the United States Mail with sufficient postage, and sent to the following addresses:

(a) Declarant

SMITHWICK PARTNERS, LLC
290 Standrige Drive
Canton, GA 30115

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

Any written communication transmitted in accordance with this Section 10.05 shall be deemed received on the third (3rd) day following the day such written notice is deposited in the United States Mail.

10.06 Georgia Property Owners' Association Act. At such time as Declarant no longer owns any portion of the Property, or earlier with the express written consent of the Declarant, the Board, without the approval of the Owners, shall be authorized (but shall not be obligated) to amend this Declaration to bring the Declaration under the provisions of the Georgia Property Owners' Association Act

10.07 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.

ARTICLE XI MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders of first mortgages on Lots in the Development. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

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

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

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

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

(d) any proposed action, which would require the consent of a specified percentage of eligible mortgagees.

11.02 No Priority. No provision of this Declaration or the By-Laws 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 cases of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

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

11.04 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 Associations request.

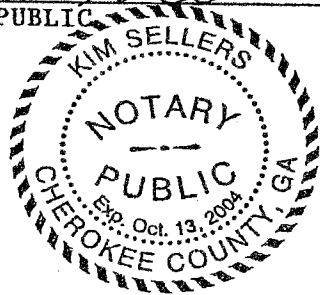
[SIGNATURES COMMENCE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed and sealed the day and year first above written.

Signed, sealed and delivered in the presence of:

Michelle Garcia
UNOFFICIAL WITNESS

Kim Sellers
NOTARY PUBLIC



SMITHWICK PARTNERS, LLC
a Georgia Limited Liability Company
BY: STANDRIDGE GRADING, INC.
A GEORGIA CORPORATION, MEMBER

Gary Standridge
BY: GARY STANDRIDGE, PRES.

SOUTHERN TRADITION HOMES, INC.
A GEORGIA CORPORATION, MEMBER

Dennis T. Floyd
BY: DENNIS T. FLOYD, PRES.

Harriet C. Arthur
HARRIET C. ARTHUR, MEMBER

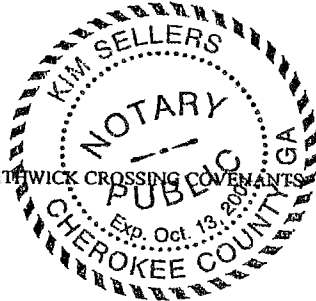
The Association, by the execution hereof, acknowledges and agrees that the Association is hereby bound by all of the Association's obligations under this Declaration of Covenants, Restrictions and Easements.

IN WITNESS WHEREOF, the Association, acting through its duly authorized officers, has caused this Declaration to be executed and sealed this 19 day of Nov, 2003.

Signed, sealed and delivered in the presence of:

Michelle Garcia
Unofficial Witness

Kim Sell
Notary Public



HOMEOWNERS ASSOCIATION
OF SMITHWICK CROSSING, INC.

By Gary Standridge
GARY STANDRIDGE, President

(Corporate Seal)

FASUBDIVISIONSASMITHWICK CROSSING COVENANTS

Exhibit A

Legal Description of the Property

Tract One:

All that tract or parcel of land lying and being in Land Lots 699, 700, 741, 742, 743, 744, 745, and 770 of the 3rd District, 2nd Section of Cherokee County, Georgia, and being more particularly described as follows:

BEGINNING at a point which is the intersection of the West line of Land Lot 770 and the Northwesterly right-of-way line of Hightower Road a/k/a Ga. S. R. 369 (R/W Varies); thence proceed along the West line of Land Lot 770 North 02 degrees 13 minutes 45 seconds West a distance of 201.45 feet to a 1" Crimp Top Pipe Found; thence continue along the West line of Land Lot 770 North 02 degrees 14 minutes 11 seconds West a distance of 195.24 feet to a 1" Crimp Top Pipe Found; thence continue along the West line of Land Lot 770 North 02 degrees 09 minutes 05 seconds West a distance of 184.12 feet to a point which is the common corner to Land Lots 742, 743, 770, and 771; thence proceed along the South line of Land Lot 742 North 89 degrees 21 minutes 55 seconds West a distance of 48.91 feet to a 1" Open Top Pipe Found; thence continue along the South line of Land Lot 742 North 89 degrees 21 minutes 17 seconds West a distance of 120.22 feet to a 1" Crimp Top Pipe Found; thence continue along the South line of Land Lot 742 South 89 degrees 18 minutes 20 seconds West a distance of 168.67 feet to a 1" Crimp Top Pipe Found; thence continue along the South line of Land Lot 742 South 89 degrees 17 minutes 57 seconds West a distance of 271.09 feet to a 1" Crimp Top Pipe Found; thence continue along the South line of Land Lot 742 South 89 degrees 18 minutes 05 seconds West a distance of 489.97 feet to a 1" Crimp Top Pipe Found; thence continue along the South line of Land Lot 742 and the South line of Land Lot 741 South 89 degrees 28 minutes 40 seconds West a distance of 186.93 feet to a 1" Crimp Top Pipe Found; thence continue along the South line of Land Lot 741 South 89 degrees 11 minutes 09 seconds West a distance of 184.75 feet to a 1" Crimp Top Pipe Found; thence continue along the South line of Land Lot 741 South 89 degrees 05 minutes 49 seconds West a distance of 429.11 feet to a point located at the intersection of the South line of Land Lot 741 and the centerline of a creek (said point, for purposes of this description of the Property, shall be referred to as "Point A"); thence proceed in a Northerly, Northwesterly, and Northeasterly direction along the centerline of said creek, following the curvature and meanderings thereof, to a point which is the intersection of the centerline of said creek and the North line of Land Lot 700 (said point, for purposes of this description of the Property, shall be referred to as "Point B")(the meanderings of the centerline of said creek from Point A to Point B having a tie line with courses and distances as follows: North 45 degrees 28 minutes 11 seconds East a distance of 1602.99 feet, North 35 degrees 31 minutes 14 seconds West a distance of 1646.76 feet, and North 43 degrees 19 minutes 47 seconds West a distance of 257.41 feet); thence proceed along the North line of Land Lot 700 and the North line of Land Lot 699 South 89 degrees 54 minutes 45 seconds East a distance of 1074.20 feet to a ¾" Crimp Top Pipe Found; thence proceed South 00 degrees 41 minutes 57 seconds West a distance of 1321.47 feet

to a 1" Crimp Top Pipe Found on the South line of Land Lot 699 and the North line of Land Lot 742; thence proceed along the North line of Land Lot 742, the North line of Land Lot 743, the North line of Land Lot 744, and the North line of Land Lot 745 North 88 degrees 40 minutes 57 seconds East a distance of 4070.71 feet to a ¾" Crimp Top Pipe Found at the intersection of the North line of Land Lot 745 and the Northwesterly right-of-way line of Hightower Road a/k/a Ga. S. R. 369; thence proceed along the Northwesterly right-of-way line of Hightower Road a/k/a Ga. S. R. 369 the following courses and distances: along the arc of a 2814.77-foot radius curve to the right, an arc distance of 120.81 feet to a point (said point being subtended by a chord bearing South 56 degrees 14 minutes 21 seconds West, a chord distance of 120.80 feet); South 56 degrees 42 minutes 01 seconds West a distance of 881.91 feet to a Concrete Monument Found; South 56 degrees 55 minutes 44 seconds West a distance of 594.66 feet to a Concrete Monument Found; South 57 degrees 55 minutes 44 seconds West a distance of 194.92 feet to a point; North 32 degrees 15 minutes 51 seconds West a distance of 250.00 feet to a point; South 55 degrees 50 minutes 40 seconds West a distance of 80.12 feet to a point; South 31 degrees 53 minutes 42 seconds East a distance of 244.03 feet to a Concrete Monument Found; South 56 degrees 30 minutes 48 seconds West a distance of 78.85 feet to a Concrete Monument Found; South 56 degrees 58 minutes 33 seconds West a distance of 248.64 feet to a Concrete Monument Found; South 56 degrees 46 minutes 01 seconds West a distance of 360.33 feet to a point; South 56 degrees 46 minutes 01 seconds West a distance of 139.40 feet to a Concrete Monument Found; South 56 degrees 57 minutes 40 seconds West a distance of 347.88 feet to a Concrete Monument Found; along the arc of a 2816.64-foot radius curve to the right, an arc distance of 566.59 feet to a point (said arc being subtended by a chord bearing South 62 degrees 38 minutes 50 seconds West, a chord distance of 565.64 feet); and, South 67 degrees 44 minutes 13 seconds West a distance of 174.47 feet to a point which is the intersection of the Northwesterly right-of-way line of Hightower Road a/k/a Ga. S. R. 369 and the West line of Land Lot 700 and the POINT OF BEGINNING.

Said tract contains 141.153 acres and is depicted on a survey prepared for LTT Properties, LLC, dated October 30, 2002, by DLM Civil Engineering and Land Surveying, bearing the certification of Larry R. McMullen, Georgia Registered Land Surveyor No. 2317, which survey is incorporated herein by reference for a more complete description of Tract One of the Property.

Tract One of the Property is conveyed subject to a temporary, non-exclusive easement more particularly described as the Reserved Easement in that certain General Warranty Deed dated November 4, 2002 from LTT Properties, L.L.C., a Georgia limited liability company, to Smithwick Partners, LLC, a Georgia limited liability company, recorded at Deed Book _____, page _____, Cherokee County Records, which instrument and record thereof are incorporated herein by reference for a more complete description of the temporary, non-exclusive easement to which Tract One of the Property is subject.

Tract Two:

All that tract or parcel of land lying and being in Land Lot 699 of the 3rd District, 2nd Section of

Cherokee County, Georgia, and being more particularly described as follows:

BEGINNING at a 1" Crimp Top Found located on the South line of Land Lot 699, said 1" Crimp Top Found being located South 87 degrees 59 minutes 45 seconds West a distance of 4069.96 feet from the intersection of the South line of Land Lot 696 and the Northwesterly right-of-way line of Georgia Highway 369 (as measured along the South lines of Land Lots 699, 698, 697, and 696); thence proceed North 00 degrees 41 minutes 57 seconds East a distance of 184.26 feet to a point; thence proceed South 12 degrees 48 minutes 58 seconds East a distance of 150.18 feet to a point; thence proceed South 62 degrees 20 minutes 09 seconds East a distance of 76.32 feet to a point lying on the South line of Land Lot 699; thence proceed along the South line of Land Lot 699 South 88 degrees 40 minutes 57 seconds West a distance of 103.18 feet to a point which is the true POINT OF BEGINNING.

After Recording Return to:
Derek S. Poarch
Bray & Johnson Attorneys
10 North Street
Canton, Georgia 30114
File #26224

Cross Reference to
Deed Book 6717, Page 2

**AMENDMENT TO DECLARATION OF COVENANTS,
RESTRICTIONS AND EASEMENTS FOR
SMITHWICK CROSSING**

STATE OF GEORGIA
COUNTY OF CHEROKEE

This Amendment to Declaration of Covenants, Restrictions and Easements for Smithwick Crossing (hereinafter referred to as this "Amendment") is made effective as of this 9th day of March, 2007, by **SMITHWICK CROSSING, LLC**, a Georgia Limited Liability Company (hereinafter referred to as the "Declarant").

WITNESSETH:

WHEREAS, Smithwick Partners, LLC filed that certain Declaration of Covenants, Restrictions, and Easements for Smithwick Crossing on the 23rd day of November, 2003, recorded at Deed Book 6717, Page 2-25, in the Office of the Clerk of the Superior Court of Cherokee County, Georgia (hereinafter referred to as the "Declaration"); and

WHEREAS, Declarant desires to amend the Declaration in certain specific regards in accordance with its rights contained in Paragraph 9.02 of Article IX of the Declaration.

NOW THEREFORE, Declarant does hereby provide as follows:

1.

Notwithstanding any other language or provision to the contrary in this Amendment, the Declaration, in the Articles of Incorporation, or in the Bylaws of the Association, Paragraph 6.03 of Article VI is hereby deleted and replaced by the following:

1 of 3

“Resubdivision of Property No Lot may be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise, without the prior written approval of the ACC of plans and specifications for such split, division or subdivision. Notwithstanding the foregoing, nothing herein shall prevent Declarant or the Owners of any Lots from combining two or more Lots into one Lot (the Combined Lot) for construction of a single Lot thereon provided, however, that such Combined Lot may not be subdivided thereafter, and, provided further that the Owner of the Combined Lot shall be responsible for annual and special assessments of one (1) Lot irrespective of the number of original Lots that make up the Combined Lot.”

2.

Notwithstanding any other language or provision to the contrary in this Amendment, the Declaration, in the Articles of Incorporation, or in the Bylaws of the Association, Paragraph 6.17 of Article VI is hereby deleted and replaced by the following:

“Animals With the exception of original Lots 38, 39, 40 and 41, no agricultural animals may be kept on any Lot and no animals, including birds, insects, and reptiles, may be kept on any Lot unless kept thereon solely as household pets and not for commercial purposes. Horses shall be allowed on original Lots 38, 39, 40 and 41. No animal shall be allowed to become a nuisance. No structure for the care, housing or confinement of any animal shall be constructed, placed or altered on any Lot unless plans and specifications for said Structure have been approved by the ACC.”

3.

Declarant hereby certifies that this Amendment to the Declaration has been duly approved by the Declarant and does not require the approval of other Owners or mortgagees, and shall be effective upon the latter to occur of the recordation hereof in the deed records of Cherokee County, Georgia or the date of execution shown above.

[CONTINUED ON NEXT PAGE]

This Amendment to the Declaration of Covenants, Restrictions, and Easements for Smithwick Crossing has been executed by the duly authorized Operations Manager on the day and year first above written.

Signed, sealed and delivered in the presence of:


WITNESS

GRANTOR:
SMITHWICK PARTNERS, LLC

By:  (SEAL)
Dennis T. Floyd, Managing Member

NOTARY PUBLIC
My Commission Expires



(60827/dp)