

SUPERIOR COURT
JACKSON COUNTY GA

After Recording Please Return To:

Mitchell A. Musser

2014 MAR 31 AM 10:49

Attorney at Law

CAMIE W THOMAS, CLERK

PO Box 339

Braselton, GA 30517

Alex Bryan
325 Alex Ln.
Jefferson, GA 30549

Clerk's Note:

Please Cross Reference to:

Deed Book 41B, Page 574 and

Deed Book 43P, Page 671



Recorded 03/31/2014 11:22AM

Camie W. Thomas Deed Doc: COVE
Clerk Superior Court, County, Ga.
Bk 0068C Pg 0580-0588

SECOND AMENDMENT TO DECLARATION OF
COVENANTS, RESTRICTIONS AND EASEMENTS
FOR
RIVER MIST PLANTATION SUBDIVISION

THIS SECOND AMENDMENT TO DECLARATION OF COVENANTS,
RESTRICTIONS AND EASEMENTS FOR RIVER MIST PLANTATION SUBDIVISION (the
"Amendment") is made effective this 31 day of March, 2014 by GUM LOG
GROUP, LLC, a Georgia limited liability company (the "Declarant").

WITNESSETH

WHEREAS, a Declaration of Covenants, Restrictions and Easements for River Mist
Subdivision was filed and recorded on October 19, 2005, in deed book 41B, page 574, Jackson
County, Georgia records (the "Declaration");

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1

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WHEREAS, an amendment to the Declaration was prepared and recorded on April 27, 2006, in deed book 43P, page 671, Jackson County, Georgia Records (the "First Amendment") (the "Declaration" and the "First Amendment" are hereby collectively referred to as the "CRE");

WHEREAS, the CRE imposed certain rights and restrictions on the property described in the CRE;

WHEREAS, pursuant to § 9.02 of the Declaration, the Declarant is vested with the sole power and authority to make certain changes to the Declaration without being required to obtain the approval of any other party; and

WHEREAS, Declarant desires to amend certain provisions of the Declaration without affecting the remaining provisions.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Declaration is hereby amended as follows:

I. Section 4.04 is hereby deleted in its entirety, and a new Section 4.04 is hereby adopted to read as follows:

4.04 Annual Assessment

(a) Beginning on the Commencement Date and continuing thereafter until January 1 of the year immediately following the Commencement Date, each Lot shall be subject to an annual assessment as established by the Board, which assessment shall initially be set at \$300 per Lot. Furthermore, each Owner (excluding Declarant), immediately upon

acquiring an interest in a Lot, shall pay to the Association a one-time initiation fee of \$500.00 per said Lot acquired by said Owner. In the event that the Lot is sold during the assessment year, the assessment for such year shall be prorated so that the Owner pays an annual assessment proportional to the number of days during that assessment year that she owned the Lot. 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 has the right to appoint and remove Directors and officers of the Association, the annual assessment shall not be reduced below the amount initially established by the Board without the express written consent of Declarant.

(b) Commencing with the first Assessment year and continuing thereafter, the annual assessment and the initiation fee, or either, may be increased at any time and from time to time during each Assessment Year at not more than thirty-three and one-third percent (33.33%) above the annual assessment or the initiation fee, respectively, for the previous Assessment Year without a vote of the Membership.

(c) Commencing with the first Assessment Year and continuing thereafter, the annual assessment and the initiation fee, or either, for each Assessment Year may at any time and from time to time be increased more than thirty-three and one-third percent (33.33%) above the maximum annual assessment or initiation fee, respectively, for the previous Assessment Year if such increase is approved by a two-thirds 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 of the Association and this Declaration.

2. It is hereby understood that there exists a typographical error in the First Amendment whereby it stated that the Annual Assessment provisions were contained in § 4.05 of the Declaration instead of § 4.04. As a point of clarification, § 4.05, Special and Parcel Assessments, has not been amended and shall be enforced as written in the Declaration.

3. § 4.09 is hereby amended by adding the following to the end of the existing paragraph: *"In addition, reasonable fines may be imposed in accordance with the terms of the Declaration and By-Laws."*

4. § 5.11 is hereby amended by adding the following to the end of the existing paragraph: *"In addition, reasonable fines may be imposed in accordance with the terms of the Declaration and By-Laws."*

5. § 6.14 is hereby amended by adding the following to the end of the existing paragraph: *"In addition, reasonable fines may be imposed in accordance with the terms of the Declaration and By-Laws."*

6. A new § 8.06 is hereby enacted and adopted to read as follows:

8.09 Fines

The Board may adopt procedures, from time to time, to impose reasonable fines, including late fees and interest, for violations of this Declaration. These fines may be enforced in the same manner as assessments imposed under this Declaration.

7. The First Amendment deleted Covenant 13, of the Summary of Covenants, pertaining to tree removal. As a point of clarification, Covenant 13 should now read as follows:

13. *Reserved.*

8. The First Amendment added a new Covenant, listed as Covenant 24, of the Summary of Covenants, pertaining to annual assessments and initiation fees. As a point of clarification, this should have been listed as Covenant 25. This Covenant is hereby amended to read as follows:

25. Annual Assessments and an Initiation Fee as set forth in § 4.04.

9. The Declaration subjected certain property to its terms, such property being set out and described on Exhibit "A" attached to the Declaration. However, there was a typographical error in the legal description incorrectly describing the property as containing 246 acres instead of the correct acreage of 67.21 acres. As such, Exhibit "A" to the Declaration is hereby amended as follows:

Exhibit "A"

Property

The Property is located along Old Swimming Pool Road a county maintained road and approximately ½ mile from the U.S. Highway 129 By-Pass.

The Property borders the Middle Oconee River on the South side.

The Property is located within the City of Jefferson and is regulated by same.

AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

All that tract or parcel of land lying and being in the 245 G.M.D., City of Jefferson, Jackson County, Georgia, containing 67.21 acres, more or less, as shown on that Plat of Survey for River Mist Plantation, prepared by Patton-Boyer, Inc., recorded on August 19, 2005, in Plat Book 66, Page 67-72, Office of the Clerk of Superior Court of Jackson County, Georgia.

Except as modified herein, the remaining terms and provisions of the CRE shall remain in full force and effect.

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

Signed, sealed and delivered

Gum Log Group, LLC, a Georgia limited liability company

In the presence of:

Patricia L. Jones

Official Witness

By: *William A. Bryan* (seal)

William A. Bryan, Member

Glenda Ann Langford

Notary Public

My Commission Expires:

Glenda Ann Langford
Notary Public
Jackson County, Georgia
My Comm. Expires
11/01/2017

**Consent Action in Lieu of a Special Meeting of the Directors of
River Mist Homeowners Association, Inc.**

The Directors of River Mist Homeowners Association, Inc. (the "Corporation"), as shown in the records of the Corporation as of the 14 day of March 2014, the date for the special meeting of the Corporation, and in lieu of the special meeting of the Directors of the Company, notice of which is waived, the Directors of the Company unanimously consent to the following actions:

Approve the minutes of the last meeting be approved.

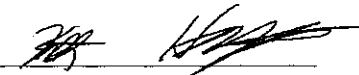
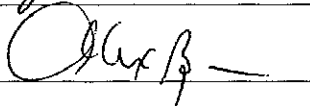
Notes that Director Larry Wood has passed away and elects to not fill his seat on the Board at this time.

Adopts the provisions attached hereto as Exhibit "A," this exhibit being incorporated herein, as amendments to the By-Laws.

Directs that this consent be placed in the minute book of the Corporation.

Directors:

Date:


Joe Ehl


3/14/14
3/14/14
3/14/14

Exhibit "A"
AMENDMENT TO BY-LAWS
OF
RIVER MIST SUBDIVISION HOMEOWNERS ASSOCIATION, INC.

1. Section 3.2, Number of Directors, is hereby amended to read as follows:

3.2 Number of Directors. *The Board of Directors of the Association shall consist of a minimum of three (3) and a maximum of five (5). Board members shall be elected at each annual meeting of the owners and serve for a term of one year and until their successors are elected.*

2. Section 3.3, Nomination, is hereby amended to read as follows:

3.3 Nomination. *The Board of Directors may establish procedures to provide for the Nomination of candidates for the board.*

3. Section 3.6, Meetings, is hereby amended by adding the following to the end of the paragraph: *"In the alternative, the Directors may meet and conduct business via email correspondence."*

LARA Wood
P.O. Box 400
TALMO, GA 30525

FILED
SUPERIOR COURT
JACKSON COUNTY, GA

2006 APR 27 PM 12: 24

**DECLARATION OF COVENANTS
RESTRICTIONS AND EASEMENTS
FOR
RIVER MIST PLANTATION SUBDIVISION CAMIE W. THOMAS**

DEED BOOK 43P PAGE 671-

672

As prescribed by Section 9.02 of the Declaration of Covenants, an amendment to said Covenants is hereby amended as follows:

4.05 Annual Assessment

(a) Beginning on the Commencement Date and continuing thereafter until January 1 of the year immediately following the Commencement Date, each lot shall be subject to an annual assessment as established by the Board, which assessment shall initially be set at \$250.00 per Lot. Furthermore, each Owner (excluding Declarant), immediately upon acquiring an interest in a Lot, shall pay to the Association a one-time initiation fee of \$300.00 per said Lot acquired by said Owner. In the event that the 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 has the right to appoint and remove Directors and officers of the Association, the annual assessment shall not be reduced below the amount initially established by the Board without the express written consent of Declarant.

5.05 Design Standards

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

6.06 Trees

Section deleted from Covenant.

Summary of Covenants

Number 13 deleted.

Number 24 added:

24. There will be an annual assessment of \$250.00 per Lot and a one-time Association fee of \$300.00 per Lot.

IN WITNESS WHEREOF, the Declarant has caused the amendments to the Covenants to be duly executed and sealed on the date so noted below.

4/27/06
Date

Gum Log Group, LLC
A Georgia Corporation

[Signature]
Official Witness

By [Signature]
Member/Manager

[Signature]
Notary Public



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SUPERIOR COURT
JACKSON COUNTY, GA

2005 OCT 20 AM 8:22

CAMIE W. THOMAS

41C 361-389

Return to:
Sutherland Asbill & Brennan LLP
999 Peachtree Street, Suite 2300
Atlanta, Georgia 30309
Attn: Enrique R. Anderson, Esq.

STATE OF GEORGIA
COUNTY OF JACKSON

Cross reference to those certain Quitclaim Deeds dated May 7, 2004 and recorded in Deed Book 34-L, pages 733-734, and Deed Book 34-L, pages 731-732, Jackson County Records.

Cross Reference to that certain Deed of Conservation Easement dated August 8, 2005 and recorded in Deed Book 40-A, pages 356 -379, Jackson County Records.

DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS AND RESTRICTIONS (this "Declaration") is hereby made by **Gum Log Group, LLC**, a Georgia limited liability company, the undersigned Declarant. Declarant is owner in fee simple of a certain tract or parcel of real property lying and being in G.M.D 245, Jackson County, Georgia and being more particularly described in Exhibit A attached hereto is by reference incorporated herein for a description and for all other legal purposes (the "Property"). Declarant comes now and declares covenants and restrictions on the Property. The covenants and restrictions hereinafter stated shall apply to the Property.

WITNESSETH

WHEREAS, Declarant was authorized by that certain letter from the US Army Corps of Engineers ("USACE"), dated September 28, 2005 (the "Authorization Letter") to implement that certain Banking Instrument, Action Number 200407010 (the "Banking Instrument"), pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) or Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401) under the administrative regulatory authority of the USACE Savannah District, Regulatory Branch, setting forth authorization for certain dredge and/or discharge of fill activities in waters of the United States, including wetlands and streams; and,

AO 1352898.3

24

WHEREAS, a copy of portions of the Banking Instrument, together with the Authorization Letter, are attached hereto as Exhibit B and by this reference the entire Banking Instrument is made a part hereof; and,

WHEREAS, dredge and/or discharge of fill material in jurisdictional waters of the United States including wetlands and streams pursuant to the Clean Water Act, Section 404, and/or Rivers and Harbors Act of 1899, Section 10, requires compensatory mitigation and perpetual protection of the mitigation property; and,

WHEREAS, the Property is approved as a commercial wetland and stream mitigation bank pursuant to the terms and conditions of the Banking Instrument. The purpose of the bank is to generate credits to compensate for wetland impacts that have been determined unavoidable after consideration of avoidance and minimization on Section 404, Clean Water Act or Section 10 Rivers and Harbors of 1899 permit actions. The Banking Instrument sets forth the success criteria required of the ecological project and the credit releases allowable. Declarant agrees to be responsible for certain restoration, enhancement, and preservation of wetlands and/or stream and streamside lands on the Property pursuant to the Banking Instrument and any subsequent modifications. Credits from the bank are sold by the bank sponsor in return for a fee agreed upon by the bank sponsor and the permit holder where USACE has approved the use of banking credits as mitigation in whole or in part on permits issued. Each time credits are sold, Declarant shall provide the USACE with an accounting of the total number of credits in the bank, the number of credits released and the permit action associated with each release of credits. The Property is to remain subject to this Declaration in perpetuity; and

WHEREAS, a dated platted survey with seal affixed by a Georgia registered surveyor of the bearings and distances and coordinate values of the boundary of the Property referenced as Exhibit A has been recorded at Plat Book 66, Page 113 of the public records of Jackson County, Georgia (the "Survey"). The Survey also approximately shows the wetlands, streams and buffers within the Property, and notes easements of record. The survey is made a part of this Declaration and is incorporated by reference.

WHEREAS, the Property consists of a total of 49.65 acres in two (2) parcels of land; and

WHEREAS, the environmental conservation functions and values are summarized and described in Exhibit C, attached hereto and made a part hereof; and

WHEREAS, the Property has been set aside for conservation use. If the restricted Property is part of, or in the future made part of, a residential or mixed-use development, the Property will be designated as common property or as an undeveloped lot, buffer or open area and will not now, nor in the future, be made part of any residential lot or lots in a residential or mixed use subdivision or development, but rather the Property shall be held and managed by the owner, developer or homeowner association, as the case may be, as an open, common and undeveloped natural conservation area.

AO 1352898.3

NOW, THEREFORE, in consideration of the mutual benefits to be derived by the Declarant and each and every subsequent owner and occupant of the Property, and as required mitigation for dredge and/or discharge of fill material in waters of the United States including wetlands and streams, Declarant has promised to place certain covenants and restrictions on the Property exclusively for conservation purposes, in order that it shall remain substantially in its restored, enhanced, preserved, open, natural and/or scenic condition, in perpetuity:

Article 1

Declarant does hereby declare that all of the Property shall be held, transferred, sold, conveyed and occupied subject to the terms and conditions of the covenants, easements and affirmative obligations set forth herein, all of which shall run with the Property and will be binding on all persons, firms, associations, corporations or governmental entities having or hereafter acquiring any right, title or interest in said Property, or any part thereof, their heirs, executors, administrators, successors and assigns. The terms and conditions of this Declaration shall be both implicitly and explicitly included in any subsequent transfer, conveyance, or encumbrance affecting all or any part of the Property. It shall set forth the terms and conditions of this Declaration either by reference to this Declaration and its recorded location or attached thereto and incorporated by reference. It shall not be amended or extinguished except by written approval of the USACE, or its successor in administration of the Clean Water Act or the Rivers and Harbors Act of 1899.

Article 2

Except as necessary (1) to carry out wetland restoration and enhance the natural habitat as set forth and approved in the Banking Instrument or such other instruments or permits as may be approved from time to time by USACE; or, (2) to fence the property to keep out livestock, trespassers, or for protection of the property; or, (3) to carry out mitigation, management and maintenance of the property approved by the USACE; Declarant and its successors and assigns having an interest in the Property shall be prohibited from:

- A. Clearing, cutting or mowing;
- B. Earthmoving, grading, removal of topsoil, cultivation, burning, filling or changes in the topography of the land in any manner;
- C. Placement of refuse, wastes, sewage, dredged spoil, solid waste, incinerator residue, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, wrecked or discarded equipment, rock, sand, cellar dirt, industrial, municipal, or agricultural waste on the Property;
- D. Draining, ditching, diking, dredging, channelizing, pumping, impounding, excavating;

AO 1352898.3

- E. Diverting or affecting the natural flow of surface or underground waters within, or flowing out of the Property;
- F. Mining, drilling;
- G. Burning, systematically removing or cutting or otherwise destroying any vegetation, except for pruning, or removal of diseased or unsafe trees conducted in accordance with current scientifically based practices recommended by the U.S. Forest Service or the Georgia Forestry Commission or their successor agencies;
- H. Spraying with biocides;
- I. Knowingly introducing exotic species on the Property or otherwise altering the natural state of the wetlands or streams;
- J. Grazing of domesticated animals;
- K. Constructing or installing any structure in the wetlands, streamside buffers or wetland buffers, whether temporary or permanent, except (1) walking trails in the uplands using pervious materials, (2) minimal structures in upland for the observation of wildlife and wetlands ecology, or (3) hunting stands may be constructed with the prior approval of the Savannah District Engineer; and
- L. Display of billboards, signs, or advertisements on or over the Property, except for the posting of no trespassing signs, signs indicating the Property or a portion thereof is for sale, signs identifying the conservation values of the Property or their protection, and/or signs identifying the owner of the Property.

Article 3

A. That certain Channel Improvement Easement from Y.D. Maddox to Oconee River Soil Conservation District of Athens, Georgia dated May 26, 1964, recorded in Book 5-A, page 48 of the public records of Jackson County, Georgia and that certain Channel Improvement Easement from Jefferson Mill Welfare Association to Oconee River Soil Conservation District of Athens, Georgia dated November 4, 1964, recorded in Book 5-A, page 24 of the aforesaid records (collectively, the "Channel Easements") affect the Property or a portion thereof, but could not be plotted on the Survey.

B. To the best of Declarant's knowledge, utility lines, road crossings and permanent structures existing as of the date hereof, if any, are shown on the Survey. Environmental impacts, if any, caused by the Channel Easements or existing easements on the Property, such as roads, utility lines or pipelines, where such easements are in place as of the date of recording of this Declaration, and where the easements are shown on the Survey, shall not be considered as causing any prohibited impacts to the Property, as set forth herein, by their use and maintenance.

AO 1352898.3

C. Should an easement on the Property, not listed in paragraph (3)(A), or not meeting the criteria of paragraph (3)(B) and determined to be prior in time and recording to this restrictive covenant, be exercised in such a manner that it conflicts with the prohibited uses of the Property set out in this restrictive covenant, then the owners of the Property, whether the Declarant of this covenant or any heirs, executors, administrators, successors or assigns, shall be responsible for providing alternative environmental mitigation in such amounts and of such value and function as the USACE or any enforcer of this Declaration shall determine in accordance with the terms of the Banking Instrument and with Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act of 1899 and their implementing regulations.

Article 4

Declarant represents and warrants that, as of the date hereof and to the best of its knowledge:

A. No substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, or regulation, as hazardous, toxic, polluting, or otherwise contaminating to the water or soil, has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Property;

B. There are no underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned;

C. The Property is in compliance with all federal, state and local laws and there is no pending or threatened litigation in any way affecting, involving or relating to the Property.

Article 5

Declarant, its personal representatives, heirs, executors, administrators, successors and assigns, reserve all other rights accruing from its ownership of the Property including but not limited to the exclusive possession of the Property, the right to transfer or assign their interest in the same, the right to take action necessary to prevent erosion on the Property or to protect public health or safety; and the right to use the Property in any manner not prohibited by this Declaration and which would not defeat or diminish the conservation purpose of this Declaration.

Article 6

It is expressly understood and agreed that this covenant does not grant or convey to non-owner members of the general public, any rights of ownership, interest in, or use of the Property. However, the protection of jurisdictional and non-jurisdictional waters of the United States, its buffers and uplands, its floodplains, vegetation, open space, aquatic and wildlife habitat, are considered herein as a benefit to the general public and to all citizens of Georgia.

AO 1352898.3

Article 7

The USACE and/or the U. S. Environmental Protection Agency, or its successor governmental agency (the "EPA"), as third party beneficiaries hereof, are hereby specifically granted the authority to enforce the provisions of this Declaration pursuant to the Clean Water Act and implementing regulations. Appropriate remedy for violation of this section is contemplated to include, without limitation, injunctive relief to restrain such violation, restoration, administrative, civil or criminal penalties as well as any other remedy available under law or equity. However, no violation of this covenant shall result in a forfeiture or reversion of title.

Article 8

The USACE, and/or the EPA, their assigned agents and contractors, shall at reasonable times and upon written notice to the public record owner(s) of the Property, have a non-exclusive right to access and inspect the Property in order to monitor and to ascertain whether there has been compliance with this Declaration.

Article 9

This covenant shall not terminate upon some fixed amount of time, but shall run with the Property in perpetuity both as to benefit and as to burden. This covenant is established for the purpose of preserving, enhancing and supporting waters of the United States, including wetlands and streams, non-jurisdictional wetlands and streams accepted as mitigation, wetland and stream buffers, upland adjacent to the Property, and the associated conservation values and functions. Furthermore, this Declaration carries out the statutory requirement of Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act and the implementing regulations.

Article 10

Declarant shall record this executed instrument in timely fashion in the Office of the Clerk of Superior Court in the county in which this Property is located and provide the USACE with a copy of the recorded Declaration.

[remainder of page is left intentionally blank; signature on following page]

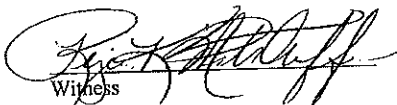
AO 1352698.3


IN WITNESS WHEREOF Declarant has duly executed this covenant on this the 13th day of ~~September~~ October, 2005.

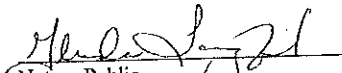
Signed, Sealed, and Delivered
in our presence:

DECLARANT:

GUM LOG GROUP, LLC


Witness

By: 
Name: LARRY WOOD
Title: member/manager


Notary Public
NOTARY PUBLIC, JACKSON COUNTY, GEORGIA
MY COMMISSION EXPIRES NOVEMBER 2, 2006
~~September~~ October
This the 13th day of ~~September~~ August, 2005.

Address of Declarant:

Gum Log Group, LLC
Attention: Mr. Alex Bryan
Post Office Box 400
Talmo, Georgia 30575

AO 1352898.3

EXHIBIT B

TABLE OF CONTENTS

TABLE OF CONTENTS iii

LIST OF TABLES..... vi

LIST OF FIGURES..... vii

01 INTRODUCTION 1

01.1 Project Location 2

01.2 Bank Goals and Objectives 2

01.3 Ownership..... 3

01.4 Service Area..... 3

Exhibit A
Description of Property

All that certain tract or parcel of land containing 49.65 acres, lying and being in the City of Jefferson, G.M.D. 245 of Jackson County, Georgia and being more particularly depicted and described as the "Mitigation Bank" on a survey (the "Survey") prepared by Patton-Boyer, Inc., and certified by Chris M. Patton (GRSL No. 2647) for River Mist Plantation, and recorded in Plat Book 66, Page 113, Public Records of Jackson County, Georgia, and the Survey is incorporated herein and made a part hereof for a more particular description of the Property.

AO 1352898.3

Exhibit B
Title Page, Table of Contents and Introduction
to that certain Gum Log Mitigation Bank, Jefferson, Georgia
dated September 2005
prepared by Nutter & Associates, Inc.
and
Authorization Letter

AO 1352898.3

EXHIBIT B

INSTRUMENT
GUM LOG MITIGATION BANK



Jefferson, Georgia
US Army Corps of Engineers
Savannah District
Wetland Mitigation Bank Review Team

September 2005

EXHIBIT C

INSTRUMENT

GUM LOG MITIGATION BANK
Jefferson, Georgia

**US Army Corps of Engineers
Savannah District
Wetland Mitigation Bank Review Team**

Prepared by

Nutter & Associates, Inc.
1073 S. Milledge Ave.
Athens, GA 30605
706-354-7925

September 2005

EXHIBIT B

5.3 Reforestation18

5.4 Timeline19

6.0 MONITORING20

 6.1 Monitoring Schedule20

 6.1.1 Wetland Monitoring20

 6.1.2 Stream and Riparian Buffer Monitoring20

 6.2 Performance and Success Criteria21

7.0 PERPETUAL PROTECTION23

8.0 BANK CREDITS24

 8.1 Mitigation Credit Calculation24

9.0 ANNUAL REPORT29

 9.1 Monitoring Report Information29

10.0 REFERENCES30

APPENDIX A Routine Jurisdictional Wetland Forms

APPENDIX B Baseline Geomorphological Conditions

EXHIBIT B

APPENDIX C Letter from GDNR

APPENDIX D Aquatic Ecological Survey

APPENDIX E Natural Stream Channel Design Structures

APPENDIX F Conservation Easement, Oconee River Land Trust

APPENDIX G USACE Savannah District SOP Mitigation Worksheets

EXHIBIT B***LIST OF TABLES***

-
- Table 1. Federal and State protected species in Jackson County, Georgia and all adjacent counties [Source: GDNR, 2004].
- Table 2. Functions and variables used to assess low-gradient riverine wetlands (Ainslie *et al.*, 1999).
- Table 3. Comparison of low-gradient model variables (Ainslie *et al.*, 1999) among the reference wetland and project wetland (E1).
- Table 4. Geomorphic measurements for project streams and reference stream (Source: USACE Savannah District, SOP, March 2004).
- Table 5. Stream Habitat Assessment (Barbour *et al.*, 1999)
- Table 6. Target species for revegetation of wetlands and riparian zones adjacent to restored streams on the Gum Log Mitigation Bank.
- Table 7. Gum Log Mitigation Bank, schedule for credit releases and major restoration and monitoring activities. (Adapted from Appendix F of Draft Revisions *Guidelines on the Establishment, Operation and Use of Wetland and Stream Mitigation Banks in Georgia*, Draft 10/20/2004)

EXHIBIT B***LIST OF FIGURES***

- Figure 1. Location of the Gum Log Mitigation Bank.
- Figure 2. Service area for the Gum Log Mitigation Bank.
- Figure 3. Gum Log Mitigation Bank on May 8, 9144 historic aerial photograph.
- Figure 4. Gum Log Mitigation Bank on January 5, 1951 historic aerial photograph.
- Figure 5. Gum Log Mitigation Bank on December 13, 1955 historic aerial photograph.
- Figure 6. Gum Log Mitigation Bank on January 29, 1967 historic aerial photograph.
- Figure 7. Gum Log Mitigation Bank on February 21, 1974 historic aerial photograph.
- Figure 8. Gum Log Mitigation Bank on 1974 historic aerial photograph from county soil survey issues May 1977.
- Figure 9. Existing land use in the vicinity of the Gum Log Mitigation Bank (Jackson County, GA).
- Figure 10. Projected land use (2017) in the vicinity of the Gum Log Mitigation Bank (Jackson County, GA).
- Figure 11. Gum Log Mitigation Bank, National Wetland Inventory (NWI) map.
- Figure 12. Existing jurisdictional waters, Gum Log Mitigation Bank.
- Figure 13. Location of Curry Creek reference wetland and stream reach, Gum Log Mitigation Bank.
- Figure 14. Restoration and enhancement plan for the Gum Log Mitigation Bank.
- Figure 15. Gum Log Mitigation Bank depicting boundaries of mitigation bank and conservation easement.

EXHIBIT B**01 INTRODUCTION**

The impetus for identifying and establishing mitigation banks may come from several sources. First and foremost is the realization that a problem or opportunity concerning wetland and/or stream mitigation exists in a specific geographical region. Problem identification includes areas of high wetland loss (U.S. Fish and Wildlife Service wetland inventory), stream instability, developmental risk (U.S. Environmental Protection Agency ADID), and/or high Clean Water Act, Section 404 permit request volume. Without an established need for a mitigation bank, which is based on Section 404 permit activity within a given HUC (USGS Hydrologic Unit Code map) or ecoregion, the general geographic region should not be considered for mitigation banking based on present regulatory conditions. After a need is established, the next step is to conduct a feasibility investigation that balances the potential of wetland creation, restoration, enhancement, and/or preservation with the opportunity of marketing mitigation credits and financial return. At this point in the process advising federal, state, and local agencies of the potential environmental and economic benefits of establishing a mitigation bank in a specific geographic region and conservation groups with special environmental, cultural, and/or economic interests may elicit additional support useful for approval by the Mitigation Banking Review Team (MBRT).

All technical and administrative information for the Gum Log Mitigation Bank has been prepared and compiled pursuant to the Federal Guidance for the Establishment, Use, and Operation of Mitigation Banks (60 FR 228:58605-58614) and subsequent local guidelines from the U.S. Army Corps of Engineers (USACE) Savannah District, which includes *Guidelines on the Establishment, Operation and Use of Wetland and Stream Mitigation Banks in Georgia* (Draft 10/20/2004) and *Standard Operating Procedures for Calculating Compensatory Mitigation Requirements for Adverse Impacts to Wetlands, Open Waters, and/or Streams*. This Instrument and all addenda have been submitted to the following MBRT members for review, comment, and approval:

Agency	Representative
USACE, Savannah District	Keysha Cutts
USACE, Savannah District	Richard Morgan
USEPA, Region 4, Water Management Division	Robert Lord
Ga. Dept. of Natural Resources	Keith Parsons
USFWS, Region 2	Deborah Harris

EXHIBIT B**01.1 Project Location**

The Gum Log Mitigation Bank (GLMB) lies adjacent to the Middle Oconee River in Jackson County, Georgia, west-southwest of the City of Jefferson (Figure 1). The site lies within the Upper Oconee River watershed (Hydrologic Unit Code (HUC) 03070101), which is a part of the larger Altamaha River drainage basin. More specifically, the GLMB lies south of Swimming Pool Road, which intersects U.S. 129 on the west side of the City of Jefferson. The project site lies in the left valley (facing downstream) of the Middle Oconee River at 34° 6.9' N, 83° 37.4' W. It is bound to the west by the river, to the north by adjacent private property, to the east by a planned conservation subdivision, and to the south by the Middle Oconee Mitigation Bank (200405300), which was recently approved by the Savannah District MBRT.

The GLMB is located within the Piedmont physiographic province in Georgia, USA, and was described by Griffith et al. (2001) as the Southern Outer Piedmont. Much of the original topsoil has eroded away due to poor agricultural practices during the turn of the twentieth century, leaving red clay subsoils exposed in areas (Trimble 1969). Streams in this region continue to respond by incising through the unconsolidated sediments delivered to the valley bottoms around the turn of the twentieth century and leaving former active floodplains as abandoned terraces (Burke, 1996; Ruhlman and Nutter, 1999).

01.2 Bank Goals and Objectives

The GLMB aims to provide ecological lift (mitigation) credits to satisfy requisite compensatory mitigation for impacts to jurisdictional waters of the U.S. authorized by the USACE under its authorities provided in the Clean Water Act, Section 404. The objectives of the GLMB are to provide improvement in the ecological condition of the regional watershed by:

- Restoring tributary streams of the Middle Oconee River;
- Restoration of riparian zones adjacent to those tributaries and enhancement and expansion of existing riparian zones adjacent to the Middle Oconee River;
- Enhancement and preservation of wetlands in the Middle Oconee River valley bottom;
- Preserving and providing effective stewardship of a comprehensive valley bottom ecosystem in perpetuity.

Nutter & Associates is committed to fostering an excellent working relationship with the MBRT, federal, state, local regulatory agencies, and conservation groups to ensure that the goal and objectives of the project are met.

The Gum Log Mitigation Bank has the potential of enhancing approximately 3.3 acres of riparian wetlands and preserving an additional 2.4 acres of wetlands. In addition, approximately 4,646 linear feet of stream channel and riparian zone will be restored and

EXHIBIT B

6,925 linear feet of additional riparian buffer adjacent to the Middle Oconee River will be enhanced.

01.3 Ownership

The GLMB property is currently owned by Gum Log, LLC. Future plans for the property include placing a restrictive covenant and conservation easement on the bank site and transferring the ownership of the site to the homeowner's association in the adjacent conservation subdivision.

01.4 Service Area

The primary service area for the GLMB covers the Middle Oconee River watershed (HUC 03070101), which includes all or portions of Hall, Jackson, Gwinnett, Barrow, Clarke, Walton, Oconee, Oglethorpe, Newton, Morgan, Greene, Jasper, Putnam, Hancock, Jones, and Baldwin Counties (Figure 2). The secondary service area includes the Upper Ocmulgee River basin (HUC 03070103) and two 8-digit HUC's lying within the Broad River and Little River watersheds (HUCs 03060104 and 03060105, respectively). Located west of the primary service area, HUC 03070103 includes portions of the upper Alcovy, Yellow, and South River watersheds, which includes all or portions of Gwinnett, Dekalb, Rockdale, Walton, Clayton, Henry, Newton, Spalding, Butts, Jasper, Lamar, Jones, Crawford, Bibb, Twiggs, Peach, and Houston Counties. East of the primary service area, HUCs 03060104 and 03060105 include all or portions of Habersham, Stephens, Banks, Franklin, Hart, Madison, Elbert, Oglethorpe, Wilkes, Greene, Taliaferro, Warren, McDuffie, Lincoln, and Columbia Counties (Figure 2).

Hefner *et al.* (1994) report that there was an estimated 2.3 million acres of wetlands lost in the 10-state southeastern United States region from the mid-1970s to the mid-1980s. The region's wetland losses represented 89 percent of the net national loss for the same period. In addition, over 90 percent of all losses/conversions of freshwater (palustrine) forested wetlands nationwide occurred in the Southeast Region (Hefner *et al.*, 1994).

According to records obtained from the USACE, Savannah District, over 477 acres of jurisdictional wetlands in the counties comprising the GLMB primary service area were authorized to be filled during an unspecified time frame up to July 26, 2001 (USACE, 2004). An additional 1536 acres of wetlands were authorized to be filled in the secondary service area. Compensatory mitigation for the impacts to jurisdictional wetlands for the above referenced authorizations totaled 856 acres in the GLMB primary service area and over 2,789 acres in the secondary service area (USACE, 2004). At the time when these figures were investigated to report in this banking instrument, there were no data available that catalogued authorized impacts specifically to streams in any geographic area of the USACE Savannah District during any time frame. [http://\(http://www.censusscope.org\)](http://www.censusscope.org).

EXHIBIT BREPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
SAVANNAH DISTRICT, CORPS OF ENGINEERS
REGULATORY BRANCH, NORTHERN SECTION
1880 ADAMSON PARKWAY, SUITE 200
MORROW, GEORGIA 30260-1777

September 28, 2005

Regulatory Branch
200407010

Gum Log, LLC
Attention: Mr. Alex Bryan
P.O. Box 400
Talmo, Georgia 30575

Dear Mr. Bryan:

I refer to the document titled *Instrument, Gum Log Mitigation Bank, Jefferson, Georgia*, dated February 2005, as amended August 2005 and September 2005, that was submitted on your behalf by Nutter & Associates, Inc. The Gum Log Mitigation Bank is part of a 246 acre parcel, located adjacent the Middle Oconee River, at latitude 34° 6.9' north, and longitude 83° 37.4' west, approximately 0.5 miles west of US 129 on Old Swimming Pool Road, near the City of Jefferson, Jackson County, Georgia.

We have received concurrence on the Banking Instrument from the following members of the Georgia Mitigation Bank Review Team: the US Fish and Wildlife Service; the US Environmental Protection Agency; and the Georgia Department of Natural Resources. These agencies agreed to accept the bank as compensatory mitigation, under the terms of the above referenced document.

We have reviewed the Banking Instrument and concur that it is consistent with the intent of our interagency agreement entitled *Guidelines for the Establishment and Operation of Wetland Mitigation Banks in Georgia*, and the *Federal Guidance for the Establishment, Use and Operation of Mitigation Banks*, as published in the *Federal Register* on November 28, 1995. Therefore, as of the date of this letter, your mitigation bank is approved to begin operating under the terms of the Banking Instrument. As stipulated in this document, 15 percent of the bank's total wetland credits (11.3) and stream credits (78,294) will be available for sale once a Declaration of Covenants and Restrictions has been recorded in the Office of the Clerk of the Superior Court in Jackson County, perpetually protecting bank lands.

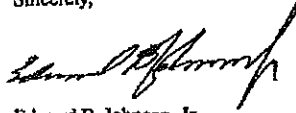
A Nationwide Permit No. 27 will be issued to authorize the activities in waters of the United States.

EXHIBIT B

-2-

If you have any questions concerning this matter, please contact Ms. Keysha Cutts at (678) 422-2724. A copy of this letter will be sent to the US Environmental Protection Agency, Region IV, Water Management Division, Wetlands Section, Attention: Mr. Robert Lord, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303-3104; US Department of the Interior, Fish and Wildlife Service, North Georgia Office, Attention: Ms. Deborah Harris, 247 South Milledge Avenue, Athens, Georgia 30605; Georgia Department of Natural Resources, Environmental Protection Division, Water Protection Branch, Attention: Mr. Keith Parsons, 4220 International Parkway, Suite 101, Atlanta, Georgia 30354; NOAA; and Nutter & Associates, Inc., Attention: Mr. Bruce Pruitt, 1073 South Milledge Avenue, Athens, Georgia 30605.

Sincerely,



Edward B. Johnson, Jr.
Chief, Northern Section

Exhibit C

Project No. 04-009.00
Task 200
Gum Log Mitigation Bank

Prepared by Bruce Pruitt of Nutter & Associates, Inc.

*Summary of Environmental Benefits***Location**

The proposed Gum Log Mitigation Bank (GLMB) lies adjacent to the Middle Oconee River in Jackson County, Georgia, west-southwest of the City of Jefferson. The site lies within the Upper Oconee River watershed (Hydrologic Unit Code (HUC) 03070101), which is a part of the larger Altamaha River drainage basin. More specifically, the proposed GLMB lies south of Swimming Pool Road, which intersects U.S. 129 on the west side of the City of Jefferson. The project site lies in the left valley (facing downstream) of the Middle Oconee River at 34° 6.9' N, 83° 37.4' W. It is bound to the west by the river, to the north by adjacent private property, to the east by a planned conservation subdivision, and to the south by the Middle Oconee Mitigation Bank (200405300), which was recently approved by the Savannah District MBRT.

General Restoration Objectives

Conceptual plans for the GLMB include stream hydrologic and geomorphic restoration, wetland restoration and enhancement, riparian zone restoration, and integration (re-coupling) of wetlands with stream systems. The following objectives will guide the development of the GLMB:

1. Restore the original courses of the two unnamed tributaries in the valley bottom of the Middle Oconee River. This constitutes a Phase I stream restoration according to the USACE Savannah District SOP. Suitable reference reaches have been identified from which hydraulic geometry for restoration of project streams will be determined.
2. Utilize surface water flow from upland sources (i.e. riparian source flow ~ return flow and interflow) to enhance hydrology of wetland areas.
3. Enhance backswamp areas that have been historically altered to extend the hydroperiod. The hydrologic perturbations initiated conversion of what was likely a forested slough into a primarily herbaceous or open water dominated zone. Wetland enhancement area E1 will also be reforested using native species.
4. Preserve existing wetlands in the southern portion of the proposed bank.
5. Restore the left valley of the Middle Oconee River to a functional riverine hardwood ecosystem with a natural low-order tributary stream meandering within restored riparian zones and mesic communities indicative of varying hydrologic conditions typical of high-order Piedmont river floodplains.

AO 1352898.3

Ecological Benefits

The bank will include the restoration and/or preservation of approximately 5.7 acres of forested, palustrine wetlands, 4,646 linear feet of restored stream channel and associated forested riparian zone along a second order stream, and 6,925 linear feet of forested riparian zone enhancement along the left bank of the Middle Oconee River. The left valley of the Middle Oconee River within the mitigation bank will be converted from a maintained pasture to a functioning stream and riparian zone along the restored stream channel. Restoration will include planting a wide variety of riparian trees endemic to the Piedmont such as overcup oak, swamp chestnut oak, water oak, pin oak, red maple, sugarberry, green ash, and black gum, to name a few. Natural stream channel design will be utilized to greatly enhance aquatic macroinvertebrate and fisheries habitat including breeding and feeding areas. The edge effect (ecotone) between the Middle Oconee River, the restored second order stream, the wetland area, and adjacent upland areas will be dramatically improved and provide habitat in the form of migration corridors, cover, breeding, feeding, and resting for a wide variety of birds, mammals, and herptiles. By re-coupling wetlands with stream networks, food web support downstream of the site will be greatly enhanced by reducing sediment transport and increasing carbon export and aquatic drift. In addition, the restoration project will reduce velocities during storm events and provide temporary surface water storage thus reducing downstream flood events.

[consent and subordination on following page]

AO 1352898.3

CONSENT AND SUBORDINATION

FOR VALUE RECEIVED, the undersigned as the owner and holder of the certain loan documents (the "Loan Documents") affecting all or a portion of the Property as identified in the foregoing Declaration of Covenants and Restrictions ("Declaration") hereby consents to and joins in the execution and delivery of the foregoing Declaration for the purpose of subordinating all of the right, title and interest of the undersigned in and to the Property and any part thereof and improvements located or to be located thereon to the foregoing Declaration and the rights, covenants, restrictions and privileges created thereby. In furtherance of such subordination, the undersigned hereby agrees that the foregoing Declaration, and the rights, covenants, restrictions and privileges created thereby, shall be in all respects superior to the Loan Documents, and the right, title and interest of the undersigned under the Loan Documents.

The Loan Documents include, without limitation, the following:

Deed to Secure Debt by Gum Log Group, LLC (the "Borrower"), for the benefit of Community Bank & Trust - Jackson ("Lender"), dated December 21, 2004, record in Deed Book 37-F, pages 53-55, records of the Clerk of the Superior Court, Jackson County, Georgia.

[signature on next page]

AQ 1377058.1

IN WITNESS WHEREOF, the undersigned has executed and delivered this Consent and Subordination to the foregoing Declaration under seal this 23 day of September, 2005.

Signed, sealed and delivered in the presence of:

Yvonne R. Skindell
Unofficial Witness

Rebecca M. Cant
Notary Public
My Commission Expires Dec. 20, 2008

My commission expires: _____

[NOTARIAL SEAL]

LENDER:

COMMUNITY BANK & TRUST - JACKSON

By: Shade Storey
Name: SHADE STOREY
Title: VICE PRESIDENT



Return to:
Patterson & Kaye, LLC
258 North Broad St.
Winder, GA 30680

FILED
SUPERIOR COURT
JACKSON COUNTY, GA

2005 OCT 19 PM 1:14

CAMIE W. THOMAS

41B 574-
631

**DECLARATION OF COVENANTS,
RESTRICTIONS AND EASEMENTS
FOR
RIVER MIST SUBDIVISION**

AO 1352638.1

53

TABLE OF CONTENTS

ARTICLE I. DEFINITIONS 2

ARTICLE II. COMMON PROPERTY 6

ARTICLE III. RIVER MIST HOMEOWNERS ASSOCIATION, INC. 10

ARTICLE IV. ASSESSMENTS..... 14

ARTICLE V. ARCHITECTURAL CONTROL..... 19

ARTICLE VI. GENERAL COVENANTS AND RESTRICTIONS..... 26

ARTICLE VII. EASEMENTS, ZONING AND OTHER RESTRICTIONS 33

ARTICLE VIII. ENFORCEMENT 37

ARTICLE IX. DURATION AND AMENDMENT 40

ARTICLE X. ANNEXATION AND FUTURE DEVELOPMENT 42

ARTICLE XI. MISCELLANEOUS 43

ARTICLE XII. MORTGAGEE PROVISIONS 46

ARTICLE XIII. LEASES 49

AO 1352638.1

**DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS
FOR RIVER MIST SUBDIVISION**

**THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS
FOR RIVER MIST SUBDIVISION IS MADE THIS TWENTY-THIRD DAY OF
SEPTEMBER 2005 BY GUM LOG GROUP, LLC.**

BACKGROUND STATEMENT

Declarant is the owner of certain real property in the City of Jefferson, Jackson County, Georgia, which is more particularly described on Exhibit "A" attached hereto and made a part hereof ("Property").

Declarant intends to develop on lands, including the real property described above, a development to be known as RIVER MIST SUBDIVISION. 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 RIVER MIST SUBDIVISION, the development made subject to this Declaration, and any other developments which are subsequently added to this Declaration pursuant to the provisions of Article X (River Mist Subdivision and such other developments which are added to this Declaration are collectively referred to as ("Development")), by the recording of this Declaration and amendments thereto. Declarant desires to provide a flexible and reasonable procedure for the overall development of the Development and the interrelationship between the Association, (as hereinafter defined) established pursuant to the Declaration, and any recreational areas, which may become a part of the Development. 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 is causing 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.

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 River Mist Homeowners Association, Inc. (a non-profit, non-stock, membership corporation organized or to be organized under the Georgia Non-profit Corporation Code), its successors and assigns.

1.02 Board

"Board" means the Board of Directors of the Association.

1.03 By-Laws

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

1.04 Commencement Date

"Commencement Date" means the date on which the first residence is sold to a third party other than Declarant or the builder of such Residence.

1.05 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; and that portion of the Property encumbered by that certain Deed of Conservation Easement dated August 8, 2005 and recorded in Deed Book 40-A, pages 356-379, in the public records of Jackson County, Georgia (the "Conservation Easement") and that certain Declaration of Covenants and Restrictions by Gum Log Group, LLC, recorded or to be recorded in the public records of the Jackson County, Georgia in connection with U.S. Army Corps of Engineers Banking Instrument #200407010 (as it may be amended from time to time, the "Wetland Declaration").

1.06 Declarant

"Declarant" means Gum Log Group, 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 development or sale all or any portion of the remaining undeveloped or unsold portions of the real property described in Exhibit "A", or the real property which is intended to become part of the Development, 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.

1.07 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.

1.08 Living Space

"Living Space" shall mean and refer to enclosed and covered areas within a Residence, exclusive of garages, carport, porches, terraces, balconies, deck, patios, courtyards, greenhouses, atriums, bulk storage areas, attics, and basements.

1.09 Lot

"Lot" means any parcel of land shown upon a subdivision plat recorded in the Office of the Clerk of the Superior Court of Jackson County, covering any portion of the Property, provided, however, that no portion of the Common Property shall ever be a Lot except as provided in Section 2.05.

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 Residence 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 Parcel

“Parcel” shall mean and refer to separately designated residential areas comprised of various types of housing initially or by annexation made subject to this Declaration. If separate Parcel status is desired, the Declarant shall designate in an amendment to this Declaration subjecting the property to the terms and conditions of this Declaration that such property shall constitute a separate parcel or parcels. In the absence of specific designation of separate Parcel status, all property made subject to this Declaration shall be considered a part of the same parcel. The Board may also grant Parcel status to any area if so requested in writing by the Owners holding at least seventy-five percent (75%) of the total vote entitled to vote thereon in such area.

1.15 Property

“Property” means that certain real property hereinabove described together with such additional real property as may be subjected to the provisions of this Declaration in accordance with the provisions of Article X hereof.

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 prerequisite 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, mailbox, deck, courtyard, tennis court, playhouse, awning, exterior lighting, guest or servant’s quarters, curbing, paving wall, tree, shrub (and all other forms of landscaping and hardscaping), swing set, basketball goal, landscape statue,

fountain, sign, signboard, temporary or permanent living quarters (including any house trailer) or 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) Intentionally Omitted

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 also 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. Any such conveyance of Common Property by Declarant to the Association will be by limited warranty deed, subject to all of the covenants and restrictions set forth in this Declaration, as amended, Ad Valorem Taxes for the current year, all easements serving or crossing the Common Property, all easements, licenses and other rights granted in and to the Common Property pursuant to the provisions of this Declaration, as amended, the Conservation Easement and Wetland Declaration.
- (b) It is contemplated by the Declarant that the Declarant may convey to the Association Common Property for scenic and natural area preservation and for general recreational use. The Declarant may, at Declarant's sole discretion, modify, alter, increase, reduce and otherwise change the Common Property contemplated to be conveyed to the Association in accordance with this subsection (b) of this Section 2.01 at any time prior to conveyance of such Common Property to the Association.
- (c) In addition to the property described in subsection (b) of this Section 2.01, the Declarant may convey to the Association in accordance with this Section 2.01 such other real and personal property as the Declarant may determine to be necessary or proper for the completion of the Development.
- (d) Notwithstanding any legal presumption to the contrary, the fee title to, and all rights in, any portion of the Property owned by the Declarant and designated as Common Property or designated for public use shall be reserved to the Declarant until such time as the same shall be conveyed to the Association or to any municipality or other governmental body, agency or authority.
- (e) Detention ponds, lakes and dams 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 and detention pond or lake that may be conveyed.
- (f) The Declarant shall have the right to dedicate or transfer fee simple title to all or any portion of the Property then owned by Declarant, including any portion thereof intended to be Common Property to Jackson County, Georgia, or any other public agency or

authority, public service district, public or private utility, or other person, provided that Declarant then owns any Lot or Residence primarily for the purpose of sale or has the unexpired option to add any additional property to the Development.

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 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; and provided, however, that, during the period when the Declarant has the right to appoint members 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 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 the Members duly held 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 by Members and non-members; 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) suspend, pursuant to Section 3.05, the voting rights of any Member and the right of enjoyment granted or permitted by Section 2.02;
- (g) to sell, lease or otherwise convey all or any part of its properties and interests therein;
- (h) enforce all applicable provisions of valid agreements of the Association relating to the Common Property or any part thereof; and
- (i) 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 roads for Jackson County, Georgia.

2.04 Conveyance of Common Property by Declarant of 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 its Members.

2.05 Types of Common Property

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

2.06 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.

2.07 Maintenance

The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair and replacement, subject to any insurance then in effect, of all landscaping 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. Despite anything contained in this Declaration to the contrary, however, the Association shall have no obligation to maintain and keep in good repair any landscaping, grass, or any other form or any other Structure which is placed by an Owner or Occupant within that portion of such Owner's or Occupant's Lot which is either included within or abuts any Common Property or any dedicated rights-of-way; but nothing contained in this sentence shall be deemed to give any Owner Occupant the right to place any landscaping, grass or other Structure within such Common Property or dedicated rights-of-way contrary to any other provisions of the Declaration.

The Association shall also have the right, but not the obligation to maintain and provide services for other property not owned by the Association, whether located within or without the boundaries of the Development, and to enter into easements and covenants to share cost agreements regarding such property where the Board has determined that this would benefit Owners.

2.08 Soccer Field

No lights, temporary or permanent, battery powered or electrical shall be erected on or near the soccer field as it may exist on the Property.

2.09 Conservation Easement and Wetland Declaration

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THIS DECLARATION AND THE EASEMENTS, RIGHTS AND INTERESTS CONTAINED HEREIN ARE SUBJECT TO THE TERMS, CONDITIONS, RESTRICTIONS AND PROVISIONS OF THE CONSERVATION EASEMENT AND WETLAND DECLARATION.

ARTICLE III. RIVER MIST 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 of a Residence, with the exception of Declarant, shall be a Class A Member and shall be entitled to one (1) Class A vote per Residence. 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 three (3) votes for each Lot or Residence 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.
- (c) The Development will be composed of Lots to be developed in phases containing unequal numbers of Lots. Each such phase will be platted of record in the Office of the Clerk of the Superior Court of Jackson County in accordance with Article X of this Declaration. The Declarant shall notify the Association in writing when the final phase of the Development has been so platted of record. By acceptance of a deed conveying a Lot, each Owner acknowledges that, upon the filing by Declarant of the subdivision plats covering such phases, the total votes outstanding in the Association will automatically

increase based upon the number of Lots in the phases added and in accordance with the formula set forth in subsection (b) of this Section 3.03 and in no event shall Class B Membership cease and be converted to Class A Membership (as provided in subsection (b) of this Section 3.03) until after the Association receives the written notice provided for in the preceding sentence; provided, however, nothing contained herein shall obligate the Declarant to develop any proposed phase of the Development unless such phase is subjected to this Declaration.

3.04 Board of Directors

The affairs of the Association shall be, managed by a Board of Directors. The number of Directors and the method of election of Directors shall be as set forth in 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 subject to the Right of Abatement, as defined in Section 8.02 by reason of having failed to take the reasonable steps to remedy a violation or breach of either the Restrictions or the Design Standards of the ACC (as herein defined) within thirty (30) days after having received notice of the same pursuant to the provisions of Section 5.11, 6.14 or 8.02 hereof;
- (b) shall be delinquent in the payment of any assessment levied by the Association pursuant to the provisions of Article IV hereof; or
- (c) shall be in violation of the rules and regulations of the Association relating to the use, operation and maintenance of Common Property. 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 violation described in subsection 8 of this Section 3.05, the suspension may be for a period not to exceed sixty (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 By-Laws of the Association, Declarant hereby retains the right to appoint and remove any member(s) 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 twenty (20) years after the date of the recording of this Declaration; (ii) the date upon which all of the Residences intended by Declarant to be a part of the Development have been conveyed by Declarant 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, provided, however, that the Owners may be entitled to elect certain members of the Board of the Association which shall not be removable by the Declarant acting alone.
- (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 the Declarant shall deliver the books, accounts, and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period which Declarant has in its possession. Each Owner by acceptance of a deed to or other conveyances of a Lot vests in Declarant such authority to appoint and 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 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 Association's Responsibility

Except as may be herein otherwise specifically provided, the Association shall maintain and keep in good repair all portions of the Common Property, which responsibility shall include the maintenance, repair, and replacement of the Common Property, including but not limited to the maintenance, repair, and replacement of (i) all roads, walks, trails, parking lots, landscaped areas, recreational areas, and other improvements made by Declarant or the Association situated within the Common Property, encumbering Lots or Residences; (ii) such security systems and utility lines, pipes, plumbing, wires, conduits, and related systems which are a part of the Common Property and which are not maintained by a public authority, public service district, public or private utility, or other person; (iii) all lawns, trees, shrubs, hedges, grass, and other landscaping

and all lakes and ponds situated within or upon the Common Property; and (iv) all retention areas and facilities constructed by Declarant wherever located.

The Association shall not be liable for injury or damage to any person or property, (A) caused by the elements or by any Owner or any other person, (B) resulting from any rain or other surface water which may leak or flow from any portion of the Common Property, or (C) caused by any pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, becoming out of repair. Nor shall the Association be liable to any Owner for loss or damage, by theft or otherwise, of any property of such Owner which may be stored in or upon any portion of the Common Property or any other portion of the property. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such assessments being a separate and independent covenant on the part of each Owner.

This Section 3.09 is subject to the express provisions in Section 2.07, relieving the Association from maintaining certain landscaping, grass or other Structures, which are installed by Owners or Occupants in the instances provided in such Section 2.07.

ARTICLE IV. ASSESSMENTS**4.01 Covenants for Assessments and Creation of Lien and Personal Obligation**

Each Owner of a Residence, jointly and severally, for themselves, their heirs, distributees, legal representatives, successors and assigns, by acceptance of a deed for a Residence, 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 Residences 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 Residences owned by him;
- (c) that there is hereby created a continuing charge and lien upon all Residences 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;
- (d) that such continuing charge and lien on such Residence binds such Residence 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, 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 Residence or Residences (together with any and all Structures which may from time to time be placed or located thereon) and (2) to finance the construction or repair or alteration of Structures;
- (e) that no sale or transfer at foreclosure or in lieu of foreclosure shall relieve any Residence from liability for any assessment thereafter assessed;
- (f) 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 Residence owned by a person during the period that they are an Owner shall be (in addition to being a continuing charge and lien against such Residence as provided in Section 4.01 8 of this Declaration) a personal obligation which will survive any sale or transfer of the Residence owned by him; provided, however, that such personal obligation for delinquent assessments shall not pass to 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, security, the acquisition, construction, improvement, 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 and continuing thereafter until January 1 of the year immediately following the Commencement Date, each Lot shall be subject to an annual assessment as established by the Board, which assessment shall initially be set at \$150.00 per Lot. Furthermore, each Owner (excluding Declarant), immediately upon acquiring an interest in a Lot, shall pay to the Association a one-time initiation fee of \$300.00 per said Lot acquired by said Owner. In the event that the 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 has the right to appoint and remove Directors and officers of the Association, the annual assessment shall not be reduced below the amount initially established by the Board without the express written consent of Declarant.
- (b) Commencing with the first Assessment year and continuing thereafter, the annual assessment may be increased at any time and from time to time during each Assessment Year at not more than thirty-three and one-third percent (33.33%) above the annual assessment for the previous Assessment Year without a vote of the Membership.
- (c) Commencing with the first Assessment Year and continuing thereafter, the annual assessment for each Assessment Year may at any time and from time to time be increased more than thirty-three and one-third percent (33.33%) 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 By-Laws of the Association and this Declaration.

4.05 Special and Parcel Assessments

- (a) In addition to the 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) The association shall also be authorized to levy, in any Assessment Year and with such frequency as the Association shall deem necessary, Parcel Assessments for the purpose of paying, in whole or in part, the cost of estimated expenses for the sole benefit of a particular Parcel, which Parcel Assessments shall be allocated equally among the Residences in a Parcel.

4.06 Assessment Procedure

- (a) The Board shall establish the annual assessment for each Assessment Year at an amount not in excess of the maximum annual assessment 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 portion of such costs will 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 Due Date written notice setting forth the amount of the annual assessment and the Due Date.

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 IV.

- (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 4.04(c) and Section 4.05 of this Article IV. Such written notice shall specify under which Section or Sections the Board will propose action. At such meeting the presence of Members or proxies entitled to cast fifty percent (50%) 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 thirty percent (30%) 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. Notwithstanding the required quorum requirements stated herein, a minimum vote of fifty-one percent (51%) of all of the votes of the Association shall be required to disapprove the Association's annual budget.

4.07 Uniform Rate of Assessment

Both annual and special assessments must be fixed at a uniform rate for all Residences.

4.08 Contribution by Declarant

For so long as Declarant has the authority to appoint and remove Directors and Officers of the Association, Declarant shall not be liable for the payment of any assessments.

Provided, however, during said period Declarant shall advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for the reserve allowance), and the sum of annual, special and specific assessments collected by the Association in any Assessment Year, and such advances shall be evidenced by promissory notes from the Association to Declarant bearing interest at the annual rate of twelve percent (12%) and having payment schedules and maturity dates as agreed between Declarant and the Association, but failing such agreement, being demand notes.

4.09 Effect of Nonpayment of Assessment

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 residence, 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 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.

4.11 Approval by Declarant

Notwithstanding anything to the contrary contained herein, no special assessment shall be made without the Approval of Declarant for so long as Declarant has the right to appoint officers and directors of the Association.

4.12 Specific Assessments

The Board shall have the power to specifically assess 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 any 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 Residences, which may be specifically assessed equitably among all of the residences which are benefited according to the benefit received;
- (b) Expenses incurred by the Association pursuant to Section 6.14 hereof; 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 Architectural Control Committee - Creation and Composition

- (a) An Architectural Control Committee (the "ACC") shall be established consisting of not less than one (1) or more than five (5) individuals, provided, however, that the ACC shall always have an uneven number of members. Notwithstanding anything to the contrary contained herein, Declarant shall have the right, but not the obligation, to appoint all Members of the ACC until, the plans for all of the Residences for all of the Lots in the Development have been approved by the ACC. Thereafter, the Board shall appoint the Members of the ACC. All costs of operating the ACC may, at the discretion of Declarant, be borne by the Association.
- (b) Each initial Member of the ACC shall be appointed for a term expiring on December 31, 2005. Thereafter, each Member of the ACC shall be appointed for a calendar-year term. If any vacancy should occur in the Membership of the ACC by reason of death, incapacity, resignation, removal or otherwise, the remaining members of the ACC shall continue to act and such vacancy shall be subject to the provisions of 5.01(a) and be filled by the Declarant (or Board if at the time the Board has the right to appoint members of the ACC) at the earliest possible time. Any ACC member may resign at any time by giving written notice of such resignation to the Chairman of the ACC and such resignation shall take effect on receipt thereof by the Chairman. Any member of the ACC 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 ACC).

5.02 Initial Membership of ACC

Three members representing Declarant and two members representing marketing company will make up the initial membership.

5.03 Purpose, Powers and Duties of the ACC

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

5.04 Operations of the ACC

- (a) Meetings. The ACC shall hold regular meetings at least annually or more often as may be established by the ACC. Special meetings may be called by the Chairman and shall be called by the Chairman upon the written request of a majority of the Members of the ACC then in office. Regular and special meetings of the ACC shall be held at such time and at such place, as the ACC shall specify. Notice of each regular or special meeting of

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

- (b) Activities. (i) The ACC shall adopt and promulgate the Design Standards described in Section 5.05 hereof and shall, as required, make findings, determinations, rulings, and orders with respect to the conformity with said Design Standards of plans and specifications to be submitted for approval to the ACC pursuant to the provisions of this Declaration. The ACC shall, as required, issue permits, authorizations or approvals, which may include specified requirements or conditions, pursuant to the provisions of this Declaration; and (ii) Except where the ACC has only one (1) Member, any two (2) or more Members of the ACC may be authorized by the ACC to exercise the full authority of the ACC with respect to all matters over which the ACC has authority as may be specified by resolution of the ACC, except with respect to all matters over which the ACC has authority as may be specified by resolution of the ACC, 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 ACC and upon any applicant for an approval, permit or authorization, subject, however, to review and modification by the ACC on its own motion or appeal by the applicant to the ACC as provided in this paragraph (ii). Written notice of the decision of such two (2) or more Members shall, within five (5) working days thereof, be given to any applicant for an approval, permit or authorization. The applicant may, within ten (10) days after receipt of notice of any decision which he deems to be unsatisfactory, file a written request to have the matter in question reviewed by the ACC. Upon the filing of

any such request, the matter with respect to which such request was filed shall be submitted to, and reviewed promptly by, the ACC, but in no event later than thirty (30) days after the filing of such request. The decision of a majority of the Members of the ACC with respect to such matters shall be final and binding.

5.05 Design Standards

- (a) The ACC 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 ACC for approval pursuant to the provisions of this Declaration;
 - (ii) governing the procedure for such submission of plans and specifications;
 - (iii) establishing guidelines with respect to the approval and disapproval of design features, architectural styles, exterior colors and materials, details of construction, location and size of Structures and all other matters that require approval by the ACC pursuant to this Declaration; and
 - (iv) assuring the conformity and harmony of external design and general quality of the Development.
- (b) The ACC shall make a published copy of its current Design Standards readily available to Members and prospective Members of the Association and to all applicants seeking the ACC's approval.

5.06 Submission of Plans and Specifications

No Structure shall be commenced, erected, placed, moved onto or permitted to remain on any Lot nor shall any existing Structure upon any Lot be altered in any way which materially changes the exterior appearance of the Structure or Lot, unless plans and specifications 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, buffers and parking spaces including the number thereof and all situation 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.

5.07 Approval of Plans and Specifications

Upon approval by the ACC of any plans and specifications submitted pursuant to this Declaration, two (2) copies of such plans and specifications, as approved, shall be deposited for permanent record with the ACC 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 Structure of any plans and specifications shall not be deemed a waiver of the ACC's right, in its discretion, to disapprove similar plans and specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Lot or Structure. Approval of any such plans and specifications relating to any Lot or Structure, however, shall be final as to the Lot or Structure and such approval may not be revoked or rescinded thereafter provided that there has been adherence to, and compliance with, such plans and specifications, as approved, and any conditions attached to any such approval.

5.08 Disapproval of Plans and Specifications

The ACC 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 ACC, would be likely to cause the proposed installation, construction or alteration of a Structure (i) to fail to be in conformity and harmony of external design and general quality with the standards for the Development as set forth in the Design Standards nor the Development-Wide Standard, or (ii) as to location to be incompatible with topography, finished ground elevation and surrounding Structures. In any case in which the ACC shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. In any such case the ACC shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal may be prepared and submitted for approval.

5.09 Obligation to Act

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

5.10 Inspection Rights

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

5.11 Violations

If any Structure shall be erected, placed, maintained or altered upon any Lot, otherwise than in accordance with the plans and specifications approved by the ACC pursuant to the provisions of this Article, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If in the opinion of the ACC such violation shall have occurred, the ACC shall notify the Association, and the Board shall provide written notice to the Owner by certified mail, return receipt requested setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation. If the Owner shall not have taken reasonable steps toward the required remedial action within thirty (30) days after the mailing of the aforesaid notice of violation, then the Association shall have the Right of Abatement as provided in Section 8.02 hereof.

5.12 Certificate 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 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 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.

5.13 Fees

The ACC may impose and collect a reasonable and appropriate fee to cover the cost of review of plans and of inspections performed pursuant to Section 5.10. The fee shall be established from time to time by the ACC and published in the Design Standards.

5.14 Nondiscrimination by ACC

The ACC shall not discriminate against any applicant requesting its approval of plans and specifications because of such applicant's race, color, sex, religion, age, handicap, or nation 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, handicap or national origin.

5.15 Disclaimer as to ACC Approval

Plans and specifications are not reviewed for engineering or structural design or quality of materials or compliance with any local, state, or federal law including local building codes and zoning ordinances, 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 this 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 and specifications. Every person who submits plans and specifications 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 hereby releases, remises, quitclaims, 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.

5.16 Approval of Architect and Builder

No improvements of any nature whatsoever shall be commenced, constructed, altered, added to or maintained upon any part of the Property (except for Residences and other improvements

which are constructed by Declarant and for improvements which pursuant to this Article V do not require the consent of the ACC unless and until the ACC has approved in writing the proposed architect (if any) and builder of such improvements.

AO 1352638.1

25

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 Dwelling Size; Garage

No dwelling shall be permitted on any Lot with less than 1600 square feet of Living Space; 1600 square feet for a Ranch, and 1800 for a two (2) story with a minimum of 1200 square feet on the first floor. No split foyers will be allowed. Each dwelling shall have at least a two-car garage with entrance to either side of dwelling. No front entry will be permitted.

6.03 Re-subdivision 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 residence thereon; provided, however, that such combined Lot may not be subdivided thereafter; and provided further, that the Owner of the Residence 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. Additionally all front yards must be sodded.

6.06 Trees

No tree having a diameter of ten (10) inches or more (measured from a point two (2) feet above ground level) shall be removed from any Lot unless such removal is in conformity with approved landscaping plans and specifications submitted pursuant to the provisions of Section 6.05 hereof or unless such removal is required due to disease. Guidelines relating to the preservation of trees or 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.

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,
 - (ii) not more than one "For Sale" sign, such sign having a maximum face area of 18 x 32 inches; 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 of Owners, the signs made available by the Association must be used; and
 - (iii) directional signs for vehicular or pedestrian safety in accordance with plans and specifications approved by the ACC; except that Declarant during any period in which Declarant retains the right to appoint and remove any directors and officers of the Association shall have the sole right to erect and locate directional signs without the consent or approval of either the ACC or the Association.
- (b) All "For Rent" signs are prohibited in the Development.
- (c) In no event during approved construction of any Structure shall more than one job identification sign be approved by the ACC, and such job identification sign shall be in conformity with the standards from time to time set by the ACC for such signage.
- (d) Notwithstanding the foregoing, the restrictions of this Section 6.08 shall not apply to Declarant.

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, the setbacks shown on the subdivision plat for each phase in the Development recorded in the real property records of City of Jefferson and/or Jackson County, Georgia and consistent with all applicable governmental regulations and ordinances governing setbacks. Further, no Residence shall be erected nearer than ten (10) feet to any boundary line of any neighboring Lot, or further away than twenty (20) feet from any boundary line of any neighboring Lot if so specified for any particular Lot.

6.10 Fences

No fence or wall of any kind shall be erected, maintained, or altered on any Lot without the prior approval of the ACC of plans and specifications for such fences and walls. Guidelines relating to the design, location and uses of fences and walls may be included in the Design Standards of the ACC. In no event shall galvanized chain link fences be allowed on any Lot. No fence may be erected within any building line fronting any street or road, nor may any fence be erected in the front yard of any Residence. All permitted fences are to be located in the rear yard or side yard only of any Residence, and only after approval by the ACC. Nothing contained in this Section 6.10 shall prohibit the Declarant from erecting any fences on the Property as desired by the Declarant in the exercise of his sole discretion.

6.11 Roads and Driveways

No road or driveway shall be constructed or altered on any Lot without 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 solar equipment of any sort shall be placed upon any portion of a Structure or Lot without prior written approval by the ACC. Exterior television satellite dish receivers may be installed on any Lot, provided that the dish of each such receiver is limited to a maximum of 30 inch diameter and the placement of such dish is approved by the ACC. No other form of exterior television satellite dish receiver will be allowed.

6.13 Clotheslines, Solar Equipment, Garbage Can, Etc.

Clotheslines are not allowed. All equipment, garbage cans, woodpiles and solar equipment 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 of a Lot only. No windows shall be covered by unsightly coverings, including but not limited to paper, foil or sheets.

6.14 Maintenance

Each Owner shall keep and maintain each Lot and Structure owned by him/her, as well as all landscaping located thereon and as well as all landscaping, grass and other Structures installed by such Owner on any portion of the Common Property or within the dedicated rights-of-way, 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 pedestrian 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. 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 situation 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, return receipt requested, then the Association shall have the Right of Abatement as provided in Section 8.02 hereof. Guidelines relating to the maintenance of Structures and landscaping may be included in the Design Standards of the ACC.

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. No motorized vehicles of any nature shall be permitted on pathways or unpaved Common Property except for public safety vehicles and vehicles authorized by the Board.

6.16 Recreational Equipment

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, as approved by the ACC but shall be painted to match the house. No above ground pool shall be allowed. Tennis courts while permitted, are restricted to either the rear yard or, if to be, located in the side yard, must be no closer to the street than the front plane of the Residence. The fencing, netting, landscaping and location of the tennis court must be approved by the ACC.

6.17 Exposed Foundations

No Residence shall have exposed concrete block foundations.

6.18 Non-Discrimination

No Owner or person authorized to act for an Owner shall refuse to sell or rent, after receiving a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the purchase or rental of any Lot to any persons because of race, color, religion, sex, age, handicap or national origin. Anything in this Declaration to the contrary notwithstanding, this covenant shall run with the land and shall remain in effect without any limitation in time.

6.19 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. Barking pets will be considered a nuisance after dark.

6.20 Unsightly or Unkempt Conditions

The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly or disassembly of motor vehicles and other mechanical devices which might tend to cause disorderly, unsightly or unkempt conditions, shall not be pursued or undertaken on any property within the Development.

6.21 Solid Waste

- (a) No person shall dump or bury rubbish, garbage, or any other form of solid waste on any Lot or on Common Property. No burial of construction materials, waste or debris (including but not limited to trees, stumps or building materials) is permitted 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 may be placed in the open on any

day that pick-up is to be made, in order to provide access to persons making such pick-up. At all times such containers shall be screened and 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.

6.22 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.

6.23 Residential Use

All Lots shall be use for residential purposes exclusively. No business or business activity shall be carried on upon any Lot at any time except with the written approval of the ACC; provided, however, that nothing herein shall prevent ACC and ACC's subsidiaries, affiliates, employees and agents from using any Lot owned or leased by ACC for the purpose of carrying on business related to the development, sale and rental of Lots in the Development. However, the Board may permit a Lot to be used for business purposes so long as such business, in the sole discretion of the Board, does not otherwise violate the provisions of the Declaration or By-Laws, does not create a disturbance and does not unduly increase traffic flow or parking congestion. The Board may issue rules regarding permitted business activities.

6.24 Guns

The use of firearms in the Development is prohibited. The term "firearms" includes B-B guns, pellet guns, and large and small firearms of all types.

6.25 Site Distance at Intersections

All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where this would create a traffic or sight problem.

6.26 Utility Lines

No overhead utility lines, including lines for cable television, shall be permitted within the Development, except for temporary lines as required during construction and lines installed by or at request of Declarant.

6.27 Air-Conditioning Units

Except as may be permitted by the Board or its designee, no window air conditioning units may be installed.

6.28 Lighting

Except for seasonal Christmas decorative lights during Christmas season, all exterior lights must be, approved by the Board or its designee.

6.29 Artificial Vegetation, Exterior Sculpture, and Similar Items

No artificial vegetation shall be permitted on the exterior of any property. Exterior sculpture, fountains, flags, and similar items must be approved by the ACC.

6.30 Energy Conservation Equipment

No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless they are an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Board or its designee.

6.31 Sales and Construction Activities

Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, it shall be expressly permissible for Declarant and its agents, employees, successors, and assigns to maintain and carry on such facilities and activities as may be reasonably required, convenient, or incidental to the completion, improvement, and sale of Lots and/or Residences or the developing of Lots, Residences and Common Property and the Additional Property, including, without limitation, the installation and operation of sales and construction trailers and offices, signs and model Residences, all as may be approved by Declarant from time to time, provided that the location of any construction trailers of any assignees of Declarant's rights under this Section 6.31 shall be subject to Declarant's approval. The right to maintain and carry on such facilities and activities shall include specifically the right to use Residences as model residences, and to use any Residence as an office for the sale of Lots and/or Residences and for related activities.

6.32 Permanent Buildings and Structures

No metal buildings or structures for storage or for any other use shall be permitted on any Lot. All accessory buildings and structures whether of a portable or permanent nature must first be approved in writing by the Architectural Control Committee. No structures or buildings of any sort may be constructed or erected on the front or side yards of any Lot, including but not limited to tennis courts, swimming pools and storage buildings.

ARTICLE VII. EASEMENTS, ZONING AND OTHER RESTRICTIONS**7.01 Easements**

- (a) Declarant hereby expressly reserves to the Declarant, its successors and assigns forever, the right to create perpetual easements in, on, over and under any part of 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 stormwater 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; and
 - (iv) the planting or re-planting of hedges, shrubbery, bushes, trees, flowers and plants of any nature.
- (b) The rights and easements of enjoyment in and to the Common Property shall additionally be subject to the right of the Declarant to the exclusive use as portions of the Common Property reasonably required, convenient or incidental to the improvement and sale of Lots including, but not limited to, sales and business offices, storage areas, construction yards and signs. Such right of the Declarant may be delegated by it to developers and builders having an interest in the Property, shall be exercised so as to avoid any unnecessary inconvenience to or infringement upon the rights of others and shall continue until such time as such persons no longer own any Lot primarily for the purpose of sale or December 31, 2010, whichever shall first occur, without affecting any member's obligation to pay assessments coming due during such period of time or the permanent charge and lien on any member's Lot in favor of the Association.
- (c) 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 any filed or recorded map or plat relating thereto.

7.03 Entry

The Declarant and its employees, agents, successors and assigns shall have the right at all reasonable times to enter upon all parts of each Easement Area for any of the purposes for which such Easement Area is reserved, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and the carrying out of such purposes, provided the same are done in accordance with the provisions of this 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 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.

7.05 Easements for Utilities and Public Services

There is hereby reserved for the benefit of Declarant, the Association, and their respective successors and assigns, the alienable, transferable, and perpetual right and easement, as well as the power to grant and accept easements to and from Jackson County, Georgia or any other public authority or agency, public service district, public or private utility, or other person, upon, over, under and across (i) all of the Common Property and (ii) those portions of all Lots and all Residence as are reasonably necessary, for the purpose of installing, replacing, repairing, maintaining and using master television antenna and/or cable systems, security and similar systems, and all utilities, including but not limited to, storm sewers, drainage systems, and retention ponds and facilities for the Development or any portion thereof, and electrical, gas, telephone, water and sewer lines, provided that such easements shall not unreasonably affect the developability, marketability or value of any such Lot or Residence.

Such easements may be granted or accepted by Declarant, its successors or assigns, provided, however, that for so long as Declarant owns any Lot or Residence primarily for the purpose of sale or has the un-expired option to add the additional Property or any portion thereof to the Development, the Association must obtain the written consent of Declarant prior to granting and accepting any such easements. To the extent possible, all utility lines and facilities serving the Development and located therein shall be located underground. By virtue of any such easement and facilities, it shall be expressly permissible for the providing utility company or other supplier

or service, with respect to the portions of the Development so encumbered, (i) to erect and maintain pipes, lines, manholes, pumps, and other necessary equipment and facilities, (ii) to cut and remove any trees, bushes, or shrubbery, (iii) to grade, excavate, or fill, or (iv) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement, and use of such utilities and systems; provided, however, that such utility company or other supplier or servicer shall take reasonable actions to repair any damage caused by such utility company or other supplier or servicer during the exercise of any rights conveyed under any easement granted hereunder.

7.06 Easements for Walks, Trails, Signs, and Perimeter Wall

There is hereby reserved for the benefit of Declarant, the Association, and their respective successors and assigns, the alienable, transferable, and perpetual right and easement upon, over, and across those strips of land along and adjacent to those exterior boundaries located adjacent to streets and roads for all lots and all Residences, such strips to be bounded by such exterior boundaries adjacent to streets and roads and by Lines in the interior of such Lots and Residences which are ten (10) feet from and parallel to such exterior boundaries, for the installation, maintenance, and use of sidewalks, traffic directional signs, and related improvements, provided that Declarant shall have no obligation to construct any such improvements. There is further reserved for the benefit of Declarant, the Association, and their respective successors and assigns, the alienable, transferable and perpetual right and easement upon, over, and across those strips of land ten (10) feet in width located along those boundaries of all Lots and Residences that constitute part of the perimeter boundary of the Development, such easement to be for the purpose of constructing, installing, replacing, repairing and maintaining a perimeter wall or fence around all or a portion of the perimeter boundary of the Development, provided that Declarant shall have no obligation to construct any such perimeter wall or fence.

7.07 Easements for Additional Property

There is hereby reserved in Declarant, and its successors, assigns, and successors-in-title to any additional property which is annexed into the Development pursuant to Article X ("Additional Property") (if said rights are granted by Declarant to such successors, assigns, and successors-in-title), for the benefit of and as an appurtenance to the Additional Property and as a burden upon the Property, perpetual, non-exclusive rights and easements for (i) pedestrian and vehicular ingress, egress, and parking, across, within, and on all roads, sidewalks, trails and parking facilities, from time to time located within the Common Property or within easements serving the Common Property, (ii) the installation, maintenance, repair, replacement and use within the Common Property and those portions of Lots and Residences hereof of security systems and utility facilities and distribution lines, including, without limitation, drainage systems, storm sewers, electrical, gas, telephone, water, sewer, and master television antenna and/or cable system lines, and (iii) drainage and discharge of surface water onto and across the Property, provided that such drainage and discharge shall not materially damage or affect the Property or any improvements from time to time located thereon.

7.08 Environmental Easement

There is hereby reserved for the benefit of Declarant, the Association, and their respective agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement on, over, and across all Lots and all unimproved portions of Residences for the purpose of taking any action necessary to effect compliance with environmental rules, regulations, and procedures from time to time promulgated or instituted by the Association or by any governmental entity, such easement to include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water, and the right to dispense pesticides.

7.09 Granting of and Acceptance of Easements

The Association shall have the right to grant and accept easements as provided in Section 7.05 hereof and to dedicate or transfer fee simple title to all or any portion of the Common Property to City of Jefferson, Georgia, or to any other public agency or authority, public service district, public or private utility, or other person, provided that any such transfer of the fee simple title must be approved by a majority of those present in person or by proxy at a duly held meeting of the Association and by Declarant for so long as Declarant owns any Lot or Residence primarily for the purpose of sale or has the unexpired option to add any additional property to the Development.

ARTICLE VIII. ENFORCEMENT

8.01 Right of Enforcement

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

8.02 Right of Abatement

- (a) Except where different notice provisions are provided 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 violation or breach. If the Owner shall fail to take reasonable steps to remedy such violation or breach within thirty (30) days after the mailing of said written notice, then the Association shall have the Right of Abatement.
- (b) The Right of Abatement, as used in this section and in Sections 5.11 and 6.14 hereof, means the right of the Association, through its agents and employees, to enter at all reasonable times upon any Lot or Structure, as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove or repair such violation, breach or other condition which may exist thereon contrary to the provisions hereof, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and such actions, provided such entry and such actions are carried out in accordance with the provisions of this Section, and with the cost thereof including the costs of collection including reasonable attorneys' fees, together with interest thereon at the lower of the highest rate permitted by law or 18%, to be a binding personal obligation of such Owner enforceable in law, as well as a lien on Owner's Lot, enforceable pursuant to the provisions of Section 8.04 hereof. Such lien shall be superior to any and all charges, liens or encumbrances which may in any manner arise or be imposed upon the Lot after such entry whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, excepting only (i) such liens for taxes or public charges as are by applicable law made superior, (ii) the liens created by Section 4.01 hereof and (iii) all deeds to secure debt given to secure a loan the proceeds of which are used (1) to purchase a Lot or Lots (together with any and all Structures which may from time to time be placed or located thereon) and (2) to finance the construction, repair or alteration of Structures.

8.03 Specific Performance

Nothing contained in this Declaration shall be deemed to affect or limit the rights of the Declarant, the Association or any Owner to enforce the Restrictions by appropriate judicial proceedings or to recover damages. However, it is hereby declared that it may be impossible to

measure accurately in money the damages which will accrue to a beneficiary hereof, its transferees, successors or assigns, by reason of violation of, or failure to perform any of the obligations provided by this Declaration; and therefore any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity to enforce the provisions hereof.

8.04 Collections of Assessments and Enforcement of Lien

- (a) If any assessment, interest, cost or other charge is not paid as required by this Declaration, the Association may bring either an action at law against the Owner personally obligated to pay the same, or an action to foreclose any lien created by this Declaration against the Lot or Lots subject to the lien, or both, for the purpose of collecting such assessment, cost or charge, plus any interest thereon and costs of collection, including reasonable attorneys' fees.
- (b) As an additional remedy, but in no way as a limitation on the remedies, if any assessment, interest, cost or other charge is not paid as required by this Declaration, each Owner hereby grants to the Association and its assigns the following irrevocable power of attorney: To sell the said Lot or Lots subject to the lien at auction, at the usual place for conducting sales at the Court House in Jackson County, Georgia, to the highest bidder for cash, after advertising the time, terms and place of such sale once a week for four weeks immediately preceding such sale (but without regard to the number of days) in the paper in which the Sheriff's advertisements for Jackson County, Georgia are published, all other notice being hereby waived by each Owner; and the Association or any person on behalf of the Association, or assigns, may bid and purchase at such sale and thereupon execute and deliver to the purchaser or purchasers at such sale a conveyance of said property in fee simple, which conveyance shall contain recitals as to the happenings of the default upon which the execution of the power of sale herein granted depends, and each Owner hereby constitutes and appoints the Association and assigns, the 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 of 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 of costs and expenses of sale and fifteen (15) percent of the aggregate amount due for attorneys' fees, shall pay any excess to such Owner, or to the heirs or assigns of such Owner as provided by law. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise and are granted as cumulative to the remedies for collection of said indebtedness provided by law.
- (c) WAIVER. EACH OWNER, BY ACCEPTANCE OF A DEED CONVEYING A LOT SUBJECT TO THIS DECLARATION, WAIVES ANY RIGHT WHICH OWNER MAY HAVE UNDER THE CONSTITUTION OR THE LAWS OF THE STATE OF

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

8.05 No Waiver

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

ARTICLE IX. DURATION AND AMENDMENT

9.01 Duration

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 Jackson County, Georgia, after which time this Declaration and the Restrictions shall be automatically renewed for successive periods of ten (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 Jackson 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. This Section 9.01 is subject to any contrary provisions of Georgia law as now in effect or from time to time amended, including but not limited to the provisions of O.C.G.A. Section 44-5-60.

9.02 Amendments of 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 and filed and recorded in Land Records of the Superior Court of Jackson 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 Owner's 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 (it being the requirement of consent contained in this Section 9.02 (i)), or (ii) in the event that such amendment would materially and adversely affect the security title and 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 agrees that, if requested to do so by Declarant, such Owner will consent to the amendment of this Declaration or any other instruments 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 Amendments 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 Owner 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.

ARTICLE X. ANNEXATION AND FUTURE DEVELOPMENT**10.01 Annexation**

- (a) 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 Property by the Declarant without the consent of the Class A Members. Such additional real property may, but does not need to be contiguous to any portion of the Property which is then subject to this Declaration; and may be either raw land which is intended to be or is in the process of being developed into residential subdivision lots, or is fully developed into residential lots at the time of annexation. Such annexation shall be accomplished by filing in the Office of the Clerk of the Superior Court of Jackson County, Georgia, one or more Supplementary Declarations with respect to the additional properties, executed by the Declarant, its successors or assigns, which shall extend the scheme of the Covenants contained herein to such properties and thereby subject such additions to assessment for their just share of the Association expenses. Said Supplementary Declarations may contain such complimentary additions and modifications of the Covenants contained herein as may be necessary to reflect the different character of the additional properties as are not inconsistent with the scheme of this Declaration. In no event, however, shall any such Supplementary Declaration revoke, modify or add to the Covenants established by this Declaration regarding the property described in said Exhibit "A". If the additional properties or any portion thereof are made subject to the provisions hereof, Declarant, its successors and assigns, shall have the right, but not the obligation, to construct on the additional properties such recreational and other facilities as Declarant, its successors and assigns, shall deem advisable for the common use and enjoyment of the Owners. If someone other than Declarant owns the real property to be annexed, the Supplementary Declaration shall be consented to by the owner of the real property to be annexed in addition to being signed by the Declarant.
- (b) 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 of the Association. Declarant also reserves the right to amend this Declaration unilaterally at any time so long as it has the authority under this Article X without the prior notice and without the consent of any owner, for the purpose of removing certain portions of the Property then owned by the Declarant or its affiliates or the Association from the provisions of this Declaration to the extent originally included in error or as a result of any changes whatsoever in the plans for the Property desired to be effected by the Declarant, provided such withdrawal in not unequivocally contrary to the overall, uniform scheme of development of the Property.

ARTICLE XI. MISCELLANEOUS**11.01 No Reverter**

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

11.02 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.

11.03 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.

11.04 Gender

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

11.05 Notices

All amendments, notices, requests, objections, waivers, rejections, agreements, approvals, disclosures or consent of any kind made pursuant to this Declaration, whether made by the Declarant, the Association, the 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 address:

- (a) Declarant Gum Log Group, LLC
 P.O. Box 400
 Talmo, Georgia 30575-0400

- (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 11.05 shall be deemed received on the third (3rd) day following the day such written notice is deposited in the United States Mail.

11.06 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.

11.07 Insurance

- (a) At all time during the term of this Declaration, the Association, its successors and assigns, shall be required to keep any and all recreational facilities and any other improvements located on the Common Property fully insured by a reputable insurance company authorized to transact business in the State of Georgia with (i) fire, vandalism, malicious mischief and extended coverage insurance in an amount adequate to cover the cost or replacement of such improvements in the event of loss of any and/or all of such improvements, fixtures and contents thereof; and (ii) public liability insurance in such amounts as shall be determined by the Board of Directors as appropriate for the type of use which shall be allowed on the Common Property. Any such policies of insurance shall require that the certificate holders and insured be given thirty (30) days prior written notice of any cancellation of such policies.
- (b) Immediately after the damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty.

Any damage or destruction shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least seventy-five percent (75%) of the total Association vote entitled to vote thereon, and, so long as the Declarant has the right to appoint and remove directors, the Declarant, otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed one hundred and twenty (120) days. No mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Association's members, levy a special assessment. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not

repaired or reconstructed, such excess shall be deposited for the benefit of the Association.

In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then, in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Community in a neat and attractive condition.

- (c) The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the persons who are responsible hereunder for maintenance of the damaged or destroyed property.

11.08 Merger

Upon a merger or consolidation of the Association with another association, its property, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or, in the alternative, the property, rights and obligations of another association may, by operation of law, be added to the properties of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the Covenants contained herein within the Property, together with the convenience and restrictions established upon any other properties as one plan. Except as hereinafter provided, no such merger or consolidation shall affect any revocation, change of or addition to the Covenants established by this Declaration within the Property.

No such merger or consolidation shall be effective, however, unless first approved by the Association's Board of Directors and by members entitled to cast at least two-thirds (2/3) of the votes of each class of members. Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the By-Laws of the Association, during any period in which Declarant retains the right to appoint and remove any directors and officers of the Association, Declarant may enter into a merger or a consolidation of the Association in its sole discretion, without the approval of any member or mortgagee.

11.09 Perpetuities

If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of George Bush, former President of the United States of America.

11.10 No Partition

There shall be no judicial partition of the Development or any part thereof, nor shall any person acquiring any interest in the Development or any part thereof seek any such judicial partition unless the Development has been removed from the provisions of this Declaration.

ARTICLE XII. MORTGAGEE PROVISIONS

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

12.01 Notices 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 Residence 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 Residence 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 Residence 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 of an Owner of a Residence of any obligation under the Declaration of 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.

12.02 Special FHLMC Provision

So long as required by the Federal Home Loan Mortgage Corporation and/or its successors, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least two-thirds (2/3) of the total Members of the Association entitled to vote thereon consent, the Association shall not:

- (a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Property which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Property shall not be deemed a transfer within the meaning of this subsection);

- (b) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an owner of a Residence;
- (c) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Residences and of the Common Property. (The issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver or abandonment within the meaning of this provision.);
- (d) fail to maintain insurance as required by this Declaration; or
- (e) use hazard insurance proceeds for any Common Property losses for other than the repair, replacement or reconstruction of such property.

First mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Property and may pay overdue premiums on casualty insurance policies or secure new casualty insurance policies upon the lapse of an Association policy, and first mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

12.03 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 Residence in the cases of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

12.04 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 Residence. Further, each Owner shall be obligated to inform the Association in writing of the sale by each Owner of such Owner's residence, including the date of the sale, the name of the purchaser, and the forwarding address for the selling Owner. Such notice shall be, accompanied by a copy of the deed of conveyance from the selling Owner to the purchaser.

12.05 Amendment by Board

Should either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation and/or their respective successors subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

12.06 Applicability of Article XII

Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Georgia law for any of the acts set out in this Article.

12.07 Failure of Mortgagee to Respond

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

ARTICLE XIII. LEASES

13.01 Application

In order to assure a community of congenial Owners and thus protect the value of each Residence within the Development, the leasing of a Residence, or any portion thereof, by any Owner (other than as provided herein for certain mortgagees and Declarant) shall be subject to the provisions contained in this Article so long as the Property is subject to the Restrictions.

13.02 Notice and Regulation

Any Owner intending to lease their Residence, or any portion thereof, shall give written notice of such intention to the Board of Directors, stating the name and address of the intended lessee, the terms of the proposed lease and such other information as the Board may reasonably require. The Board of Directors shall have the authority to make and enforce reasonable rules and regulations in order to enforce this provision, including the right to impose fines constituting a lien upon the Residence being leased.

13.03 Required Lease Provisions

The Board of Directors may set the minimum lease term; however, said minimum term shall not be set for greater than one (1) year. All leases and lessees are subject to the provisions of the Declaration and By-Laws. The Owner must make available to the tenant a copy of this Declaration. Any lease of a Residence, or a portion thereof, shall be deemed to contain the provisions of Sections 13.03 (a), (b), (c) and (d), whether or not said provisions are expressly stated therein, and each Owner covenants and agrees that any lease of their Residence shall contain the language of said provisions, and further, that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant on the Residence. Any lessee, by occupancy of a Residence, agrees to the applicability of this covenant and its incorporation as part of the lease along with the following provisions:

- (a) Lessee acknowledges that promises made to Lessor, as contained in Article XIII, Sections 13.03 (a), (b), (c) and (d) of the Declaration of Covenants, Conditions and Restrictions for River Mist which govern the leased premises, and which provisions are incorporated within this lease agreement, are made for the benefit of the Association for the purpose of discharging Lessor's duties to the Association through Lessee's performance.

In order to enforce those provisions made for the benefit of the Association, the Association may bring an action against Lessee for recovery of damages or for injunctive relief, or may impose any other sanctions authorized by the Declaration and By-Laws, as they may be amended from time to time, or which may be available at law or equity, including but not limited to, all remedies available to a landlord upon breach or default of a lease agreement by a lessee. Failure by the Association to enforce any of its rights shall in no event be deemed a waiver of the right to do so thereafter.

- (b) Lessee shall comply strictly with all provisions of the Declaration, By-Laws, and with the administrative rules and regulations adopted by the Association pursuant thereto, as any of the foregoing may be lawfully amended from time to time. Lessee shall control the conduct of their family and guests in order to assure compliance with the foregoing and shall indemnify and hold Lessor and the Association harmless for any such person's failure to comply. Lessee acknowledges the violation by Lessee or any occupant or Person living with Lessee of any provision of the Declaration, By-Laws, or rules and regulations adopted thereunder shall constitute a default under this lease. Lessee further acknowledges that the Association has the right to act on its own behalf, or where necessary on behalf of Lessor, as Lessor's attorney-in-fact, to seek any remedies which are available to a landlord upon breach or default of a lease agreement by Lessee.
- (c) Upon request by the Association, Lessee shall pay to the Association all unpaid annual assessments and special assessments, as lawfully determined and made payable during and prior to the terms of this lease agreement and any other period of such payments to the Associations in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Association's request. All payments made to the associations shall reduce by the same amount Lessee's obligation to make monthly rental payments to Lessor under the Lease. If Lessee fails to comply with the Association's request to pay assessments, Lessee shall pay to the Association all late or delinquent charges, fines, interest, and costs of collection, including, but not limited to, reasonable attorneys' fees actually incurred, to the same extent Lessee would be required to make such payments to the Association if Lessee were the Owner of the Premises during the term of this lease agreement and any other period of occupancy by Lessee.
- (d) Lessee's right shall be subject to all rights of the Association and any bona fide mortgagee or deed to secure debt which is now or may hereinafter be placed upon the Premises by Lessor.

13.04 Enforcement

For the purpose of enforcing the provisions of Section 13.03, which shall be incorporated in the provisions of any leases of a Residence, each Owner, by acceptance of a deed or other conveyance of a Residence, hereby irrevocably appoints the Association, which may act by any one of its authorized officers, as their attorney-in-fact, to enforce said provisions and to take action, at law or equity, which could be taken by said Owner against the Lessee should Lessee default in performance under the lease agreement. Each Owner hereby further acknowledges that this power of attorney shall only apply in the event of noncompliance by a Lessee with the provisions of Section 13.03, and that the Association, its Board of Directors, employees and agents shall be held harmless by each Owner in exercising the power-of-attorney herein granted to the Association.

13.05 Expenses of Eviction

In the event the Association proceeds to evict the Lessee, any costs, including attorneys' fees, and court costs, associated with the eviction shall be specifically assessed against the Residence,

becoming a lien thereon subject to enforcement and shall become the personal obligation of the Owner thereof, such being deemed hereby as an expense which benefits the Residence and the Owner thereof.

13.06 Rights of Lessee

Any Lessee charged with a violation of the Declaration, By-Laws, or rules and regulations is entitled to the same rights to which the Owner is entitled as provided in the Association's By-Laws.

13.07 Rights of First Mortgagees

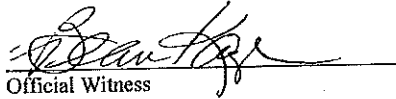
Notwithstanding anything to the contrary herein contained, the provisions of this Article shall not impair the right of any first mortgagee to:

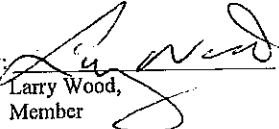
- (a) foreclose or take title to the Residence pursuant to remedies contained in any mortgage;
- (b) take a deed or assignment in lieu of foreclosure; or
- (c) sell, lease, or otherwise dispose of a Residence acquired by the Mortgagee.

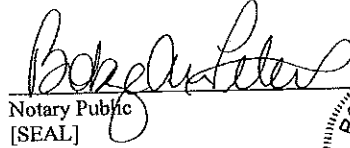
IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed and sealed the day and year first above written.

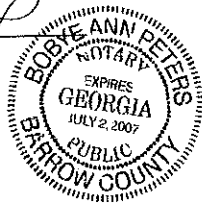
Signed, sealed and delivered
in the presence of:

Gum Log Group, LLC, a Georgia
limited liability company


Official Witness

By: 
Larry Wood,
Member


Notary Public
[SEAL]



SUMMARY OF COVENANTS

1. Association dues are mandatory.
2. Once notified, owners must remedy violations of the covenants within 30 days or membership is suspended.
3. No Signs of any kind (except "For Sale").
4. Parking on any street is prohibited (other than visitors).
5. No mobile homes or trailers allowed in development.
6. Boats and Campers must be parked in a garage.
7. Pets must be on a leash when outside (unless they are within an allowable fence).
8. Each owner has a responsibility to prevent nuisances such as noise, odors and unclean conditions.
9. Any recreational vehicle or motor home stored in the development for more than 24 hours is considered a nuisance and may be removed from the development.
10. The pursuit of hobbies or other activities, including assembly and disassembly of motor vehicles, which may cause disorderly, unsightly, or unkempt conditions is prohibited.
11. Sheds, tool storage areas, workshops, or outbuildings must be concealed by hedges, latticework or screening. (Also, see Section 6.32)
12. No exterior antennae of any kind, except 24 inch satellite dish antennae.
13. No trees can be removed except those that are diseased or dead, those needing to be removed to promote the growth of other trees, or those, damage by severe weather, or for safety reasons, or trees within 10 feet of the residence, driveway, walkways or septic field.
14. All garbage cans and woodpiles must be concealed from view of neighboring streets and property.
15. The discharge of firearms (including BB guns and Pellet guns) is prohibited.
16. Fences must be wood with wood color or white and are restricted to back or side yards only. Chain link fences are not allowed.

17. Statues, statuary concrete and/or cement figures and birdbaths cannot be visible from any street.
18. ATVs are prohibited. (Remember that Georgia Law states that any gas powered vehicle, including go-carts, can be operated only by licensed drivers above the age of 16.)
19. No above ground swimming pools.
20. No exterior clotheslines.
21. Mailboxes must be maintained in a good state of repair.
22. Any detached garage must be similar architecture as the house with roofing, siding and facing of similar material and color as the Residence.
23. No window air-conditioning units will be allowed.
24. Must abide by all conditions outlined in the Declaration of Covenants, Restrictions and Easements for River Mist Subdivision as they pertain to Buffer Strips.

EXHIBIT "A"**PROPERTY**

The Property is located along Old Swimming Pool Road a county maintained road and approximately ½ mile from the U.S. Highway 129 By-Pass.

The Property borders the Middle Oconee River on the South side.

The Property is located within the City of Jefferson and is regulated by same.

AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

All that tract or parcel of land lying and being in the 245 G.M.D., City of Jefferson, Jackson County, Georgia, containing 246 acres, more or less, as shown on that Plat of Survey for River Mist Plantation, prepared by Patton-Boyer, Inc., recorded on August 19, 2005 in Plat Book 66, Page 67-72, Office of the Clerk of Superior Court of Jackson County, Georgia.

CONSENT AND SUBORDINATION

FOR VALUE RECEIVED, the undersigned as the owner and holder of the certain loan documents (the "Loan Documents") affecting all or a portion of the Property as identified in the foregoing Declaration of Covenants, Restrictions and Easements for River Mist Subdivision ("Declaration") hereby consents to and joins in the execution and delivery of the foregoing Declaration for the purpose of subordinating all of the right, title and interest of the undersigned in and to the Property and any part thereof and improvements located or to be located thereon to the foregoing Declaration and the rights, covenants, restrictions and privileges created thereby. In furtherance of such subordination, the undersigned hereby agrees that the foregoing Declaration, and the rights, covenants, restrictions and privileges created thereby, shall be in all respects superior to the Loan Documents, and the right, title and interest of the undersigned under the Loan Documents.

The Loan Documents include, without limitation, the following:

Deed to Secure Debt by Gum Log Group, LLC (the "Borrower"), for the benefit of Community Bank & Trust - Jackson ("Lender"), dated December 21, 2004, record in Deed Book 37-F, pages 53-55, records of the Clerk of the Superior Court, Jackson County, Georgia.

[signature on next page]

AO 1377215.1

IN WITNESS WHEREOF, the undersigned has executed and delivered this Consent and Subordination to the foregoing Declaration under seal this 23 day of September, 2005.

Signed, sealed and delivered in the presence of:

Yvonne L. Shinnell
Unofficial Witness

Rebecca M. Canty
Notary Public
My Commission Expires Dec. 29, 2008

My commission expires: _____

[NOTARIAL SEAL]

LENDER:

COMMUNITY BANK & TRUST - JACKSON

By: Shade Storey
Name: SHADE STOREY
Title: VICE PRESIDENT

[seal]

