

RETURN TO:  
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Atlanta, GA 30337

203

DECLARATION OF PROTECTIVE COVENANTS  
FOR  
HARBOUR POINT

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**TABLE OF EXHIBITS**

<u>Exhibit</u>	<u>Name</u>
"A"	Definitions
"B"	Property Submitted
"C"	Additional Property Which Can Be Unilaterally Submitted by Declarant
"D"	Bylaws of Harbour Point Community Association, Inc.

## DECLARATION OF PROTECTIVE COVENANTS

FOR

### HARBOUR POINT

THIS DECLARATION is made on the date hereinafter set forth by Lanier Joint Venture, a Georgia general partnership (hereinafter sometimes called "Declarant").

#### **Background Statement**

Declarant is the owner, or, if not the owner, has the written consent of the owner, of the real property described in Article II, Section 1 of this Declaration.

Declarant desires to subject the real property described in Article II, Section 1 hereof to the provisions of this Declaration to create a residential community of single-family housing and to provide for the subjecting of other real property to the provisions of this Declaration.

NOW, THEREFORE, Declarant hereby declares that the real property described in Article II, Section 1 of this Declaration, including the improvements constructed or to be constructed thereon, is hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens, hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property hereby or hereafter made subject hereto, shall be binding on all persons having any right, title, or interest in all or any portion of the real property now or hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title, and assigns, and shall inure to the benefit of each and every owner of all or any portion thereof.

#### **Article I** **Definitions**

Unless the context shall prohibit, certain words used in this Declaration shall be defined as set forth in Exhibit "A" attached hereto and by reference made a part hereof.

#### **Article II** **Property Subject To This Declaration**

**Section 1. Property Hereby Subjected To This Declaration.** The real property described in Exhibit "B" attached hereto and by reference made a part hereof is, by the recording of this Declaration, subject to the covenants and restrictions hereafter set forth and, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to this Declaration.

**Section 2. Other Property.** Only the real property described in Section 1 of this Article II is hereby made subject to this Declaration; provided, however, by one or more Supplementary Declarations, Declarant and the Association have the right, but not the obligation, to subject other real property to this Declaration, as hereinafter provided.

### **Article III** **Association Membership and Voting Rights**

**Section 1. Membership.** Every Person who is the record owner of a fee or undivided fee interest in any Lot that is subject to this Declaration shall be deemed to have a membership in the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. There shall be two (2) classes of membership, Class A and Class B. Class A members shall be Owners of Lots which do not have the exclusive right of use of a Boatslip associated therewith. Class B members shall be Owners of Lots which have the exclusive right of use of a Boatslip associated therewith.

No Owner, whether one or more Persons, shall have more than one membership per Lot. In the event of multiple Owners of a Lot, votes and rights of use and enjoyment shall be as provided in this Declaration and in the Bylaws. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a member or the member's spouse, but in no event shall more than one vote be cast for each Lot owned.

**Section 2. Voting.** Members shall be entitled to one vote for each Lot owned. When more than one Person holds an ownership interest in any Lot, the vote for such Lot shall be exercised as those Owners themselves determine and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended in the event more than one Person seeks to exercise it.

### **Article IV** **Assessments**

**Section 1. Purpose of Assessment.** The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, welfare, common benefit, and enjoyment of the Owners and Occupants of Lots, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

**Section 2. Creation of the Lien and Personal Obligation for Assessments.** Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) annual assessments or charges; (b) special assessments, such assessments to be established and collected as hereinafter

provided; and (c) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable times as may be imposed in accordance with the terms of this Declaration. All such assessments, together with late charges, interest, not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum, costs, and reasonable attorney's fees actually incurred, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, shall also be the personal obligation of the Person who was the Owner of such Lot at the time the assessment fell due. Each Owner shall be personally liable for his or her portion of each assessment coming due while he or she is the Owner of a Lot, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings or deed in lieu of foreclosure.

The Association shall, within ten (10) days after receiving a written request therefor and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot shall be binding upon the Association as of the date of issuance.

Each type of assessment shall be paid at a uniform rate per Lot subject to such assessment in such manner and on such dates as may be fixed by the Board of Directors, which may include, without limitation, acceleration, upon ten (10) days' written notice, of assessments for delinquents. Unless otherwise provided by the Board, assessments shall be paid in annual installments.

The monthly costs of operating the Association may fluctuate dramatically during each budget year. Therefore, the Board is not required to prorate the assessment obligation of any Owner who has not lived in the Community for a full year. For example, if the bulk of the costs of operating the Association are likely to be incurred in the summer months, any Owner moving into the Community after the beginning of the budget year but prior to the summer months may be required to pay full assessments.

**Section 3. Computation.** It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year, which may include a capital contribution or reserve in accordance with a capital budget separately prepared. The Board shall cause the budget and the assessments to be levied against each Lot for the year (or portion thereof in the case of the initial budget) to be delivered to each member at least thirty (30) days prior to the due date for payment of the assessments (or the first installment thereof). The assessments shall become effective unless disapproved at a meeting by a Majority of the Total Association Vote. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for



any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

**Section 4. Special Assessments.** In addition to the other assessments authorized herein, the Association may levy special assessments. So long as the total amount of special assessments allocable to any Lot does not exceed Three Hundred Dollars (\$300.00) in any one fiscal year, the Board may impose the special assessment. Except as provided in Article VII, Section 2 hereof, any special assessment which would cause the amount of special assessments allocable to any Lot to exceed this limitation shall be effective only if approved by a Majority of the Total Association Vote. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

**Section 5. Lien for Assessments.** All sums assessed against any Lot pursuant to this Declaration, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, as provided herein, shall be secured by a lien on such Lot in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Lot, except for (a) liens of ad valorem taxes, or (b) liens for all sums unpaid on a first Mortgage, or (c) liens for all sums on any Mortgage to Declarant duly recorded in the land records of the county where the Community is located and all amounts advanced pursuant to such Mortgage and secured thereby in accordance with the terms of such instrument.

All other Persons acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded in such records shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

**Section 6. Effect of Nonpayment of Assessments: Remedies of the Association.** Any assessments or installments thereof which are not paid when due shall be delinquent. Any assessment or installments thereof delinquent for a period of more than ten (10) days shall incur a late charge in such amount as the Board may from time to time determine. The Association shall cause a notice of delinquency to be given to any member who has not paid within ten (10) days following the due date. If the assessment is not paid within thirty (30) days, a lien, as herein provided, shall attach and, in addition, the lien shall include the late charge, interest, not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum, on the principal amount due, and all late charges from the date first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid after sixty (60) days, the Association may, as the Board shall determine, institute suit to collect such amounts and/or to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to

bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the same.

If any assessment or portion thereof is delinquent for sixty (60) days or more, in addition to all other rights provided in this Declaration, the Association shall have the right upon ten (10) days written notice to suspend any utility services, the costs of which are expenses of the Association, including, without limitation, water, electricity, heat, air conditioning, gas and cable television service, to the Lot until such time as the delinquent assessment and all costs permitted pursuant to this paragraph are paid in full. Any costs incurred by the Association in discontinuing and/or reconnecting any utility service, including reasonable attorney's fees, shall be an assessment against the Lot and shall be collected as provided herein for the collection of assessments. The notice requirement of this paragraph shall be deemed complied with if the notice is sent by certified mail, return receipt requested, to the Lot address and to any other address the Owner of the Lot has provided in writing to the Association.

No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot. No diminution or abatement of any assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements 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 assessments being a separate and independent covenant on the part of each Owner.

All payments shall be applied first to costs and attorney's fees, then to late charges, then interest and then to delinquent assessments.

**Section 7. Date of Commencement of Assessments/Assessment Obligation of Declarant.**

(a) Except as provided in the immediately succeeding sentence, the assessments provided for herein shall commence as to all Lots subject to assessment hereunder as of the first day of the calendar year in which a swimming pool which is or will be owned by the Association is available for use. Specific assessments relating to any Boatslips and any marina of which the Boatslips are a part shall commence as to all Lots owned by Class B members subject to such assessment hereunder on the first day of the month following the date that at

least one Boatslip is available for use. All assessments shall be due and payable in a manner and on a schedule as the Board of Directors may provide.

(b) After the commencement of assessment payments as to any Lot, Declarant and its affiliates, on behalf of themselves and their respective successors and assigns, covenant and agree to pay the full amount of the assessments provided herein for each Lot owned containing an occupied residence; provided, however, each Lot owned by Declarant or its affiliates which does not contain an occupied residence shall not be subject to any assessment provided for herein.

(c) Any Lot which has been approved by Declarant for use as a model home for marketing and sales purposes shall not be deemed to be occupied for residential purposes and shall not be subject to assessments under this Declaration whether owned by Declarant or any other Person, so long as such Lot is approved for use as a model home and is not occupied for residential purposes.

(d) Notwithstanding anything to the contrary herein, the Declarant and its affiliates may contribute assessments due from them in services or materials or a combination of services and materials, rather than in money (herein collectively called "in kind contribution"). The amount by which monetary assessments shall be decreased as a result of any in kind contribution shall be the fair market value of the contribution. If the Declarant, or its affiliate, as the case may be, and the Association agree as to the value of any contribution, the value shall be as agreed. If the Association and the Declarant, or its affiliate, as the case may be, cannot agree as to the value of any contribution, the Declarant, or its affiliate, as the case may be, shall supply the Association with a detailed explanation of the service performed and material furnished, and the Association shall acquire bids for performing like services and furnishing like materials from three (3) independent contractors, approved by the Declarant, or its affiliate, as the case may be, who are in the business of providing such services and materials. If the Association and the Declarant, or its affiliate, as the case may be, are still unable to agree on the value of the contribution, the value shall be deemed to be the average of the bids received from the independent contractors.

**Section 8. 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 of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. Fines levied pursuant to Article XII, Section 1 of this Declaration and the costs of maintenance performed by the Association which the Owner is responsible for under Article V, Section 2 of this Declaration shall be specific assessments. The Board may also specifically assess Lots for the following Association expenses:

(a) Expenses of the Association which benefit less than all of the Lots may be specifically assessed equitably among all of the Lots which are benefited according to the benefit received.

(b) Expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be assessed equitably among all Lots according to the benefit received.

This Section specifically contemplates, without limitation, that the Association may incur expenses (including, without limitation, expenses for extraordinary items, matters and occurrences and expenses not anticipated and/or not budgeted for in advance) for the operation, insurance, maintenance and repair of any Boatslips and any marina of which the Boatslips are a part, which expenses benefit the Lots owned by Class B members only, and for certain maintenance, insurance and repair (in accordance with this Declaration) related to single-family attached or detached townhouse residences within the Community, which expenses benefit the Lots containing such type of housing only. Such expenses shall be included in the budget prepared as described in Article IV, Section 3, and the Lots primarily benefited by such expenses shall be subject to specific assessment imposed by the Board pursuant to this Section to cover such expenses.

**Section 9. Budget Deficits During Declarant Control.** For so long as the Declarant has the authority to appoint the directors and officers of the Association, Declarant may (a) 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 capital reserves) and the sum of the annual, special and specific assessments collected by the Association in any fiscal year, and such advances shall be evidenced by promissory notes from the Association in favor of the Declarant, or (b) cause the Association to borrow such amount from a commercial lending institution at the then-prevailing rates for such a loan in the local area of the Community. The Declarant in its sole discretion may guarantee repayment of such loan, if required by the lending institution, but no Mortgage secured by the Common Property or any of the improvements maintained by the Association shall be given in connection with such loan.

## **Article V** **Maintenance**

**Section 1. Association's Responsibility.** The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping, paving, private roads (including, without limitation, parking areas serving any Lots containing single-family attached or detached townhouse residences) owned by the Association, and other improvements situated on the Common Property. The Association shall maintain (i) all entry features for the Community, (ii) all street signs, if any, originally

installed by Declarant or a Builder, and (iii) all drainage detention and retention areas and central septic systems which were originally maintained by Declarant or a Builder, to the extent such areas are not maintained on an ongoing basis by a governmental entity. The Association shall also maintain all property outside of Lots located within the Community which was originally maintained by Declarant or a Builder. The Association may, but shall not be obligated to, maintain, repair, or replace, as necessary, all mailboxes or mailbox posts located within the Community. In addition, the Association shall have the right, but not the obligation, to maintain property not owned by the Association where the Board has determined that such maintenance would benefit all Owners.

With regard to Lots containing a single-family attached or detached townhouse residence, the Association shall maintain and keep in good repair the following: (a) all water and sewer pipes or facilities which serve more than one such Lot, whether located within or without the boundaries of the structure or Lot, to the extent that such pipes and facilities are not maintained on an ongoing basis by a public or private utility company or by a governmental entity, (b) exterior surfaces of garage doors (but the Owner shall be responsible for the operation of the garage doors), (c) all grass in the front and side yards of such Lots (mowing, edging and chemical treatment only, if and as necessary), (d) all roofs, downspouts and gutters, (e) all exterior building surfaces, with the exception of hardware and glass; provided, however, the Association shall not be responsible for waterproofing foundations either above or below grade, and (f) all driveways. Specifically excluded from such maintenance responsibility shall be the following: (1) walkways, deck surfaces, patio surfaces, and landscaping within the patios, planters, or courtyards, if any, of such Lots, (2) HVAC or similar equipment located outside the structure on such Lots, (3) all doors, including screen and storm doors, hinges, frames, and door frames and hardware which are part of the entry system, (4) hose bibs contained in the exterior walls of structures on such Lots, (5) lighting fixtures pertaining to a particular Lot and being located outside an entry way or in a garage, (6) window screens, window frames and glass, (7) foundations and footings, including waterproofing, and (8) pipes which serve only one such Lot, whether located within or without the boundaries of the structure or Lot. Upon resolution of the Board and approval by Owners representing at least a Majority of the Lots containing a single-family attached or detached townhouse residence, the Association may assume responsibility for providing additional exterior maintenance of such Lots and the structures thereon, with the expenses thereof to be paid through specific assessments as provided in Article IV, Section 8.

There is hereby reserved to the Association a blanket easement upon, across, over, and under all property within the Community for access, ingress, and egress as necessary to permit the Association to perform such maintenance. The foregoing maintenance shall be performed consistent with the Community-Wide Standard.

The Association shall not be liable for injury or damage to person or property caused by the elements, by the Owner of any Lot, or by any other Person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Common Property,

or from any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder. The Association shall not be liable to the Owner of any Lot, or such Owner's Occupants, guests or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Property. The Association shall not be liable to any Owner, or any Owner's Occupant, guest or family, for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Section, where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. The Association shall repair incidental damage to any Lot resulting from performance of work which is the responsibility of the Association. In performing its responsibilities hereunder, the Association shall have the authority to delegate to such Persons of its choice such duties as are approved by the Board.

**Section 2. Owner's Responsibility.** Except as provided in Section 1 above, all maintenance of the Lot and all structures, parking areas, landscaping, and other improvements thereon, including, without limitation, all pipes, lines, ducts, conduits, or other apparatus which serve only the Lot, whether located within or without the Lot's boundaries (which includes all gas, electricity, water, sewer, heat and air conditioning, and cable television lines, pipes, ducts, conduits and other apparatus serving only the Lot), shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with the Community-Wide Standard and this Declaration. Any maintenance which involves an exterior change, including, without limitation, repainting of the exterior of improvements in a different color, shall require prior approval pursuant to and in accordance with Article VI, Section 10.

Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to the Common Property by an Owner or Occupant which is the responsibility of the Association hereunder (including, without limitation, landscaping of Common Property) shall be performed at the sole expense of such Owner or Occupant, and the Owner or Occupant shall not be entitled to reimbursement from the Association, even if the Association accepts the maintenance or repair. Each Owner shall also be obligated: (i) to perform his or her responsibility in such manner so as not to unreasonably disturb other Persons in or on other Lots, (ii) to promptly report to the Association or its agent any defect or need for repairs for which the Association is responsible, and (iii) not to make any alterations in the portions of the Lot which are to be maintained by the Association, if any, or to remove any portion thereof or to make any additions thereto or do anything with respect to the exterior or interior of such Lot or the structures thereon which would or might increase the Association's maintenance costs or jeopardize or impair the safety or soundness of any Lot or structure thereon, without first obtaining the written consent of the Board, nor shall any Lot Owner impair any easement without first obtaining written consent of the Association and of the Lot Owner or Owners for whose benefit such easement exists.

**Section 3. Failure to Maintain.** If the Board of Directors of the Association determines that (a) any Owner has failed or refused to discharge properly any of such Owner's

obligations with regard to the maintenance, repair, or replacement of items for which such Owner is responsible hereunder; or (b) that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, or the family, guests, lessees, or invitees of any Owner, and is not covered or paid for by insurance, in whole or in part, then the Association may perform the repair, replacement or maintenance and shall, except in the event of an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement, at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. Except in an emergency situation, the Owner shall have ten (10) days within which to complete such maintenance, repair, or replacement, or, in the event that such maintenance, repair, or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof or in an emergency situation, the Association may provide any such maintenance, repair, or replacement at such Owner's sole cost and expense, and all costs shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot.

**Section 4. Measures Related to Insurance Coverage / Tots Containing Single-Family Attached or Detached Townhouse Residences Only.**

(a) The Board, upon resolution, shall have the authority to require all or any such Lot Owner(s) to do any act or perform any work involving portions of the Community which are the maintenance responsibility of such Lot Owner, which will, in the Board's sole discretion, decrease the possibility of fire or other damage to any improvements located in the Community, reduce the insurance premium paid by the Association for any insurance coverage, or otherwise assist the Board in procuring or maintaining such insurance coverage. This authority shall include, but need not be limited to, requiring all such Owners to turn off cut-off valves, which may now or hereafter be installed, during winter months for outside water spigots, requiring such Owners to insulate pipes sufficiently or take other preventative measures to prevent freezing of water pipes, requiring such Owners to install smoke detectors, requiring such Owners to make improvements to such Owner's Lot, and such other measures as the Board may reasonably require, so long as the cost of such work does not exceed \$500.00 per Lot in any twelve month period.

(b) In addition to, and not in limitation of, any other rights the Association may have, if any such Lot Owner does not comply with any reasonable requirement made by the Board pursuant to this Section, the Association, upon fifteen (15) days' written notice (during which period the Lot Owner may perform the required act or work without further liability), may perform such required act or work at the Lot Owner's sole cost. Such cost shall be an assessment and a lien against the Lot and shall be collected in the manner provided for collection of assessments in Article IV. The Association shall have all rights necessary to implement the requirements mandated by the Board pursuant to this Section, including,

without limitation, the right of entry during reasonable hours and after reasonable notice to the Owner or Occupant of such Lot, except that access may be had at any time without notice in an emergency situation.

**Section 5. Party Walls and Party Fences.**

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

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

(c) Damage and Destruction. If a party wall or fence is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the wall or fence may restore it, and if the other Owner or Owners thereafter make use of the wall or fence, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

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

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

**Article VI**  
**Use Restrictions and Rules**

**Section 1. General.** This Article, beginning at Section 2, sets out certain use restrictions which must be complied with by all Owners and Occupants. These use restrictions may be amended only in the manner provided in Article XII, Section 4 hereof regarding amendment of this Declaration. The Board of Directors may, from time to time, without



consent of the members, promulgate, modify, or delete use restrictions and rules and regulations applicable to the Lots and the Common Property. This authority shall include, but shall not be limited to, the right to limit the type and size and to set the maximum and minimum speeds of vehicles within the Community. The Board shall also have the authority to impose all other necessary traffic and parking regulations and to restrict the maximum noise levels of vehicles in the Community. Such regulations and use restrictions shall be distributed to all Owners and Occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, cancelled, or modified in a regular or special meeting by a Majority of the Total Association Vote.

**Section 2. Use of Lots.** All Lots shall be used for single-family residential purposes exclusively. No business or business activity shall be carried on or upon any Lot at any time except with the prior written approval of the Board. Leasing of a Lot as permitted hereunder shall not be considered a business or business activity.

**Section 3. Signs.** No sign of any kind shall be erected by an Owner or Occupant within the Community without the prior written consent of the ARC (as hereinafter defined) except: (a) such signs as may be required by legal proceedings; (b) not more than one "For Sale" sign consistent with the Community-Wide Standard, having a maximum area of four square feet and a maximum height of four feet above ground level; and (c) signs erected by Declarant and its affiliates. The Board shall have the right to erect any reasonable and appropriate signs.

**Section 4. Vehicles.** Vehicles shall not be parked on any street within the Community. Vehicles shall not be parked on the Common Property (except boats docked in Boatslips and, in the case of passenger non-commercial automobiles, in designated parking areas while the users thereof are using the Common Property) or on any portion of a Lot: other than the driveway and the garage. Except for passenger non-commercial automobiles, vehicles shall not be parked so as to be visible from any Lot for periods of more than twenty-four (24) continuous hours (the intent of this provision is that, with the exception mentioned above, vehicles may not be stored on a Lot except if in a garage and the temporary removal of such vehicle from a Lot to break the continuity of the twenty-four (24) consecutive hours shall not be sufficient to establish compliance with this restriction). No boats shall be permitted on any portion of the Community without the prior written consent of the Board, and then only in accordance with such rules and regulations it may adopt. The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, personal watercraft (e.g. jet skis and wet bikes), trailers, storage racks, motorcycles, minibikes, scooters, go-carts, trucks, campers, buses, vans and automobiles. All parking shall be subject to such further rules and regulations as the Board may adopt.

**Section 5. Leasing.** Lots containing a residence for which a certificate of occupancy has been issued may be leased for residential purposes.

**Section 6. Occupants Bound.** All provisions of the Declaration and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants of any Lot even though Occupants are not specifically mentioned. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not paid timely, the fine may then be levied against the Owner.

**Section 7. Animals and Pets.** No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot, except that dogs, cats, or other usual and common household pets in reasonable number, as determined by the Board, may be kept on a Lot; provided, however, those pets which are permitted to roam free, or, in the sole discretion of the Board, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Lots or the owner of any property located adjacent to the Community may be removed by the Board. No pets shall be kept, bred or maintained for any commercial purpose. Dogs which are household pets shall at all times whenever they are outside a Lot be confined on a leash. Without prejudice to the Board's right to remove any such household pets, no household pet that has caused damage or injury may be walked in the Community.

**Section 8. Nuisance.** It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Lot. No Lot shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any Lot that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property adjacent to the Lot. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Lot unless required by law.

**Section 9. Unsightly or Unkempt Conditions.** The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken in any part of the Community.

**Section 10. Architectural Standards.** No exterior construction, alteration, addition, or erection of any nature whatsoever (including, without limitation, fences, pools, tennis courts, storage racks, exterior lighting, treehouses and play equipment) shall be commenced or placed upon any part of the Community, except such as is installed by the Declarant or its affiliates, or as is approved in accordance with this Section, or as is otherwise expressly permitted herein. No exterior construction, addition, erection, or alteration shall be made unless and until plans and specifications showing at least the nature, kind, shape, height, materials, and location shall have been submitted in writing to and approved by an Architectural Review Committee ("ARC"). The ARC may be established such that it is divided into two (2) subcommittees, with one subcommittee having jurisdiction over modifications and the other having jurisdiction over new construction. The Board may employ architects, engineers, or other Persons as it deems necessary to enable the ARC to perform its review. The ARC may, from time to time, delegate any of its rights or responsibilities hereunder to one or more duly licensed architects or other qualified Persons, which shall have full authority to act on behalf of the ARC for all matters delegated. Written design guidelines and procedures may be promulgated for the exercise of this review, which guidelines may provide for a review fee. So long as Declarant owns any property within the Community for development and/or sale or has the right to unilaterally annex additional property to the Community, Declarant shall have the right to appoint all members of the ARC. Upon the expiration or earlier surrender in writing of such right, the Board shall appoint the members of the ARC.

The ARC shall be the sole arbiter of such plans and specifications and may withhold approval on any reasonable basis, including purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. Any member of the ARC or Board or their representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property to inspect for the purpose of ascertaining whether or not these restrictive covenants have been or are being complied with. Such Person or Persons shall not be deemed guilty of trespass by reason of such entry. If the ARC fails to approve or to disapprove submitted plans and specifications within sixty (60) days after such plans and specifications have been submitted to it, such plans and specifications will be deemed approved. However, all activities commenced pursuant to plans which have been deemed approved shall be consistent with such plans.

As a condition of approval under this Section, each Owner, on behalf of such Owner and such Owner's successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement, and insurance to and on any change, modification, addition, or alteration. In the discretion of the ARC, an Owner may be made to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of such Owner and such Owner's successors-in-interest.

PLANS AND SPECIFICATIONS ARE NOT APPROVED FOR ENGINEERING OR STRUCTURAL DESIGN OR QUALITY OF MATERIALS, AND BY APPROVING SUCH PLANS AND SPECIFICATIONS NEITHER THE ARC OR THE BOARD, THE MEMBERS OF EACH, NOR THE ASSOCIATION ASSUMES LIABILITY OR RESPONSIBILITY THEREFOR, NOR FOR ANY DEFECT IN ANY STRUCTURE CONSTRUCTED FROM SUCH PLANS AND SPECIFICATIONS. NEITHER DECLARANT, ITS PARTNERS AND AFFILIATES, THE ASSOCIATION, THE ARC, THE BOARD, NOR THE OFFICERS, DIRECTORS, MEMBERS, SHAREHOLDERS, EMPLOYEES, AND AGENTS OF ANY OF THEM SHALL BE LIABLE IN DAMAGES TO ANYONE SUBMITTING PLANS AND SPECIFICATIONS TO ANY OF THEM FOR APPROVAL, OR TO ANY OWNER OF PROPERTY AFFECTED BY THESE RESTRICTIONS BY REASON OF MISTAKE IN JUDGMENT, NEGLIGENCE, OR NONFEASANCE ARISING OUT OF OR IN CONNECTION WITH THE APPROVAL OR DISAPPROVAL OR FAILURE TO APPROVE OR DISAPPROVE ANY SUCH PLANS OR SPECIFICATIONS. EVERY PERSON WHO SUBMITS PLANS OR SPECIFICATIONS AND EVERY OWNER AGREES THAT SUCH PERSON OR OWNER WILL NOT BRING ANY ACTION OR SUIT AGAINST DECLARANT, ITS PARTNERS AND AFFILIATES, THE ASSOCIATION, THE ARC, THE BOARD, OR THE OFFICERS, DIRECTORS, MEMBERS, SHAREHOLDERS, EMPLOYEES, AND AGENTS OF ANY OF THEM TO RECOVER ANY DAMAGES AND 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.

**Section 11. Antennas and Satellite Dishes.** No transmission antennas or satellite dishes of any kind, and no direct broadcast satellite ("DBS") antennas or multi-channel multi-point distribution service ("MMDS") antennas larger than one (1) meter in diameter, shall be placed, allowed or maintained upon any portion of the Community, including any Lot, without the prior written consent of the ARC. DBS and MMDS antennas and satellite dishes one (1) meter or less in diameter and television broadcast service antennas may be installed only if reasonably screened and located as approved by the ARC and installed in accordance with the rules and regulations of the Federal Communications Commission and of the Association, both as may be amended from time to time. However, the Board and Declarant reserve the right to (but shall not be obligated to) erect any type and size of master antenna, satellite dish or other similar master system for the benefit of the Community. Each Owner and Occupant acknowledges that this provision benefits all Owner's and Occupant's and each Owner and Occupant agrees to comply with this provision despite the fact that the erection of an individual outdoor antenna or similar device would be the most cost-effective way to receive the signals sought to be received.

**Section 12. Gardens, Basketball Goals, Etc.** Grass, ornamental plants and shrubbery (and only the foregoing) may be planted in the front or side yard of any Lot. All other planting may be done only with prior written approval of the ARC or in accordance with the guidelines previously established by the ARC. Overseeding of fescue lawns and sodding of lawns with Bermuda or zoysia grasses shall not require prior approval pursuant to this Section. No vegetable garden, hammocks, statuary, or recreational equipment may be placed, erected, allowed or maintained upon any Lot without the prior written consent of the ARC. This provision shall not, however, apply to basketball goals which may be installed after the type and location have been previously approved in writing by the ARC.

**Section 13. Tree Removal.** No trees shall be removed without the express consent of the ARC, except for (a) trees removed by the Declarant and its affiliates; (b) diseased or dead trees; and (c) trees needing to be removed to promote the growth of other trees.

**Section 14. Lighting.** Notwithstanding Article VI, Section 10 above, the following exterior lighting may be installed without the necessity of obtaining the prior approval of the ARC: (a) seasonal decorative lights during the Christmas season; (b) illumination of other than the front or side yards of a Lot; (c) illumination of model homes and entrance features constructed by the Declarant or a Builder; and (d) other lighting originally installed by the Declarant or its affiliates. Plans for all other exterior lighting must be submitted and approved in accordance with Article VI, Section 10 hereof. Decorative post lights will not be approved unless they conform with established street lighting.

**Section 15. Drainage.** Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant of any Lot may obstruct or rechannel the drainage flows after the location and installation of drainage swales, storm sewers, or storm drains. Declarant, for itself and its affiliates, reserves the right to prepare sloping banks, cut or fill, on a three (3) to one (1) slope on all streets and roads. Declarant, for itself and its affiliates, hereby reserves a perpetual easement across all Community property for the purpose of altering drainage and water flow. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

**Section 16. Sight Distance at Intersections.** All property located at street intersections shall be so landscaped as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain at any corner where this would create a traffic or sight problem.

**Section 17. Clotheslines, Garbage Cans, Woodpiles, Etc.** All clotheslines, garbage cans, woodpiles, and other similar items shall be located or screened so as to be concealed from view of neighboring Lots, streets, and property located adjacent to the Lot. All rubbish,

trash, and garbage shall be regularly removed from the Lot and shall not be allowed to accumulate thereon. Notwithstanding the foregoing, the Association reserves the right to provide and maintain a dumpster for the use of residents within the Community. Declarant, however, hereby expressly reserves the right to dump and bury rocks and trees on property within the Community as needed for efficient construction and to allow, in Declarant's sole discretion, Builders within the Community to do so.

**Section 18. Subdivision of Lot.** No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the ARC. Declarant, however, hereby expressly reserves the right to replat any Lot(s) or other property in the Community. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations.

**Section 19. Guns.** The use of firearms in the Community is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and small firearms of all types.

**Section 20. Solar Devices.** No artificial or man-made device which is designed or used for collection of or heating by solar energy or other similar purposes shall be placed, allowed, or maintained upon any portion of the Community, including any Lot, without the prior written consent of the ARC.

**Section 21. Fences.** No fence or fencing type barrier of any kind shall be placed, erected, allowed, or maintained upon any portion of the Community, including any Lot, without the prior written consent of the ARC. Fencing must be split rail, privacy or picket type fencing. The ARC may issue guidelines detailing acceptable fence styles or other specifications consistent with the immediately preceding sentence, but in no event may a chain link fence or a free-standing hog wire fence be approved.

**Section 22. Exterior Colors.** The exterior of all improvements, including, without limitation, residences, constructed, erected, allowed, or maintained upon any Lot must be painted or repainted in a color used by Declarant and Builders in the original construction and marketing of residences within the Community.

**Section 23. Mailboxes.** No mailboxes and appurtenant posts and/or structures shall be erected without the prior approval of the ARC. Generally, the foregoing must be of the same type and color as that originally installed by the Declarant and Builders.

**Section 24. Detached Structures.** No detached structure shall be placed, erected, allowed, or maintained upon any Lot without the prior written consent of the ARC. All detached structures must be consistent in design materials and color with the dwelling on the Lot.

**Section 25. Entry Features and Street Signs.** Owners shall not alter, remove or add improvements to any entry features or street signs constructed on any Lot, or any part or any easement area associated therewith without the prior written consent of the ARC.

**Section 26. Above Ground Pools.** Above ground swimming pools shall not be permitted in the Community.

**Section 27. Lakes.** This Section of the Declaration and -rules, use restrictions and design guidelines issued by the Board and the ARC shall govern the use of Lake Lanier and the U.S. Army Corps of Engineers shoreline thereof adjacent to the Community, in addition to any rules of any governmental entity or agency having jurisdiction thereof.

Owners are prohibited from withdrawing water from Lake Lanier for irrigation of lawns and gardens or for any other purpose. No docks shall be permitted except docks and/or Boatslips originally installed by or on behalf of the Declarant. Retaining walls and similar structures shall not be installed without the prior written consent of the ARC. No boats shall be permitted on any portion of the Community without the prior written consent of the Board, and then only in accordance with such rules and regulations it may adopt. No boat access to Lake Lanier shall be permitted from other than any Boatslips or the marina of which such Boatslips are a part, unless otherwise specifically authorized by the Board.

Notwithstanding anything contained in this Declaration to the contrary, no vegetable gardens, hammocks, statuary, swing sets or similar play equipment, basketball goals or similar athletic equipment, boats or boating equipment, pools, fences, clothes drying equipment, dog houses, dog runs or other pet enclosures, signs, retaining walls or any other structure or thing which, in the sole discretion of the Board or ARC, tends to detract from the appearance of the Community shall be permitted on any Lake Lot, without the prior written consent of the ARC. The restriction contained in Article VI, Section 12 relative to front and side yards shall apply to the entire yard (front, side and rear) of each Lake Lot.

Declarant, its partners and affiliates, the Owners, the Association, the Board, the ARC, and the officers, directors, shareholders, members, employees, agents, successors and assigns of any of them, shall not be held liable in any manner whatsoever for, and hereby disclaims any and all such liability and responsibility for, any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of Lake Lanier and/or the U.S. Army Corps of Engineers shoreline thereof adjacent to the Community. Each Owner of a Lot, by acceptance of a deed therefor, on behalf of such Owner and such Owner's family members, guests, and invitees, hereby agrees not to bring any action or suit against Declarant, its partners and affiliates, other Owners (and such Owner's family members, guests, and invitees), the Association, the Board, the ARC, and the officers, directors, shareholders, members, employees, agents, successors and assigns of any of them, and hereby releases, remises, quitclaims, and covenants not to sue any or all of the foregoing, for any claims, demands, and causes of action arising out of or in connection with the authorized or

unauthorized use of Lake Lanier and/or the U.S. Army Corps of Engineers shoreline thereof adjacent to the Community 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.

**Section 28. Boatslips.** Access to and use of the Boatslips, if any, and any marina of which such Boatslips are a part is strictly subject to the rules and procedures of the Association adopted by the Board and to any contracts entered into by the Association and/or Declarant, and no Person gains any ownership interest in, or any right to enter or to use, any such Boatslips or marina solely by virtue of membership in the Association or ownership or occupancy of a Lot. Rights to use any such Boatslips and marina will be granted only to such Persons, and on such terms and conditions, as determined by the Association and/or Declarant. All Persons, including all Owners, are hereby advised that no representations or warranties, either written or oral, have been or are made by Declarant or any other Person with regard to the nature or size of the improvements, or to the continuing ownership or operation, of any such Boatslips and marina. No purported representation or warranty, written or oral, with regard to such Boatslips and any marina of which such Boatslips are a part shall ever be effective without an amendment hereto executed or joined into by the Declarant and the Association.

Boatslips, if any, shall be a part of the Common Property, but each Boatslip shall be reserved for the exclusive use or primary benefit of a Lot or various Persons, both members and nonmembers, as the Declarant and/or Board may see fit, all in the manner set forth in and in accordance with rules and regulations of the Association adopted by the Board governing Boatslips. All expenses of the Association associated with the operation, insurance, maintenance and repair of any Boatslips and any marina of which such Boatslips are a part shall be assessed as specific assessments against the Lots owned by Class B members, as described in Article IV, Section 8.

## **Article VII** **Insurance and Casualty Losses**

**Section 1. Insurance.** The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements located on the Common Property or required to be maintained by the Association under Article V, Section 1 and blanket insurance for all Lots containing single-family attached or detached townhouse residences; provided, however, the Association's insurance shall not include Owners' personal property (which shall be the sole responsibility of the Owner). This insurance shall cover loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts.



If available at reasonable cost, as determined in the sole discretion of the Board, the Board shall obtain a public liability policy applicable to the Common Property insuring the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents. The public liability policy shall have a combined single limit of at least One Million Dollars (\$1,000,000.00). If available at reasonable cost, as determined in the sole discretion of the Board, the Board shall also obtain directors' and officers' liability insurance.

The Board is hereby authorized to contract with or otherwise arrange to obtain the insurance coverage required hereunder through the Declarant or its affiliates and to reimburse the Person so providing or arranging the insurance coverage for the cost thereof, and Declarant or its affiliates shall be authorized, but not obligated, to purchase such insurance coverage for the benefit of the Association and the Owners upon Declarant or its affiliate, as the case may be, and the Association agreeing upon the terms and conditions applicable to reimbursement by the Association for costs incurred by Declarant or its affiliate, as the case may be, in obtaining such coverage. Notwithstanding anything contained in this Declaration to the contrary, the Board shall not be required to comply with the provisions of this Article if the Board has contracted for or otherwise arranged to obtain the required insurance coverage through the Declarant or its affiliates.

Premiums for all insurance shall be expenses of the Association; provided, however, such premium expenses which primarily benefit a group or class of Lots (such as, without limitation, Lots containing single-family attached or detached townhouse residences or Lots owned by Class B members) may be assessed as specific assessments against only such group or class of Lots, as provided in Article IV, Section 8. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee, for the respective parties which may be benefited by such insurance, as their interests may appear. Such insurance shall be governed by the provisions hereinafter set forth:

- (a) All policies shall be written with a company authorized to do business in Georgia.
- (b) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.
- (c) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance

purchased by individual Owners, Occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.

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

(e) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners and their respective tenants, servants, agents, and guests;

(ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;

(iii) that no policy may be cancelled, subjected to nonrenewal, invalidated, or suspended on account of any one or more individual Owners;

(iv) that no policy may be cancelled, subjected to nonrenewal, invalidated, or suspended on account of any defect or the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee;

(v) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(vi) that no policy may be cancelled, subjected to nonrenewal, or substantially modified without at least ten (10) days' prior written notice to the Association.

In addition to other insurance coverage required by this Section, the Board shall obtain workers compensation insurance, if and to the extent necessary to satisfy the requirements of applicable law, and, if available at reasonable cost, as determined in the sole discretion of the Board, a fidelity bond or employees dishonesty coverage covering directors, officers, employees, and other Persons handling or responsible for the Association's funds. The amount of fidelity or employees dishonesty coverage, if obtained, shall be determined in the directors' best business judgment. Such coverage, if obtained, shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation and shall not be subject to cancellation, nonrenewal or substantial modification without at least ten (10) days'

prior written notice to the Association. The Association shall also obtain construction code endorsements, steam boiler coverage, and flood insurance, if and to the extent necessary to satisfy the requirements of The Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, the U.S. Department of Veterans Affairs ("VA") or the U.S. Department of Housing and Urban Development ("HUD").

**Section 2. Damage and Destruction -- Property Insured by Association.**

(a) In General. 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 of Directors 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 Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty allowing for any changes or improvements necessary to comply with applicable building codes.

(b) Repair and Reconstruction. Any damage or destruction to property required to be covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least seventy-five (75%) percent of the Total Association Vote otherwise agree (in the case of property which primarily benefits or is available for use by all Lots), or Owners representing at least seventy-five (75%) percent of the applicable group or class of Lots otherwise agree (in the case of property which primarily benefits or is available for use by a group or class of Lots only). 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 sixty (60) 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 of Directors shall, without the necessity of a vote of the Association's members, levy a special assessment against all Lots (in the case of property which primarily benefits or is available for use by all Lots), or against all Lots in a particular group or class of Lots (in the case of property which primarily benefits or is available for use by such group or class of Lots only). 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 to the benefit of the Association.

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

**Section 3. Damage and Destruction - Lots Not Insured by Association.** The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot not insured by the Association shall be repaired by the Owner thereof within seventy-five (75) days after such damage or destruction or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. Alternatively, the Owner may elect to demolish all improvements on such Lot and remove all debris therefrom within seventy-five (75) days after such damage or destruction. In the event of noncompliance with this provision, the Board of Directors shall have all enforcement powers specified in Article XII, Section 1 of this Declaration.

**Section 4. Insurance Deductible.** The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the Lots which are primarily benefited by such insurance.

### **Article VIII Condemnation**

Whenever all or any part of the Common Property shall be taken (or conveyed in lieu of and under threat of condemnation by the Board, acting on behalf of the Association or on the written direction of all Owners of Lots subject to the taking, if any) by any authority having the power of condemnation or eminent domain, the Association shall represent the Owners. The award made for such taking shall be payable to the Association as trustee for all Owners. The provisions of Article VII, Section 2 above, applicable to damage or destruction of property insured by the Association, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

### **Article IX Annexation and Withdrawal of Property**

**Section 1. Unilateral Annexation By Declarant.**

(a) As the owner thereof or, if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option from time to time at any time until ten (10) years after the recording of this Declaration to subject all or any portion of the real property described in Exhibit "C" attached hereto and by reference made a part hereof to

the provisions of this Declaration and the jurisdiction of the Association by filing for record in the land records of the county in which the property to be annexed is located a Supplementary Declaration describing the property being annexed. Any such annexation shall be effective upon the filing for record of such Supplementary Declaration unless a later effective date is provided therein. As long as covenants applicable to the real property previously subjected to this Declaration are not changed and as long as rights of then Owners are not adversely-affected, the Declarant may unilaterally amend this Declaration to reflect the different character of any such annexed real property.

(b) The rights reserved unto Declarant to subject additional land to the Declaration shall not and shall not be implied or construed so as to impose any obligation upon Declarant to subject any of such additional land to this Declaration or to the jurisdiction of the Association. If such additional land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

**Section 2. Other Annexation.** Subject to the consent of the owner thereof and the consent of the Declarant (so long as the Declarant owns any property for development and/or sale in the Community or has the right unilaterally to annex additional property to the Community), upon the affirmative vote or written consent, or any combination thereof, of Owners of at least two-thirds (2/3) of the Lots (other than Lots owned by Declarant so long as the consent of the Declarant is required), the Association may annex other real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the land records of the county in which the property to be annexed is located a Supplementary Declaration describing the property being annexed. Any such Supplementary Declaration shall be signed by the President and Secretary of the Association, and any such annexation shall be effective upon the filing for record of such Supplementary Declaration, unless a later effective date is provided therein.

**Section 3. Withdrawal of Property.** Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant to this Article for the purpose of removing any portion of the Community then owned by Declarant or its affiliates or the Association from the coverage of this Declaration, to the extent originally included in error or as a result of any changes whatsoever in the plans for the Community, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Community.

## **Article X**

### **Mortgagee Provisions**

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

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

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

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Lot of any obligation under the Declaration or Bylaws 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 Mortgage holders.

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

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

**Section 4. Amendments by Board.** Should the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, HUD or VA 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.

**Section 5. VA/HUD Approval.** As long as the Declarant has the right to appoint and remove the directors and officers of the Association and so long as the project is approved by HUD for insuring any Mortgage in the Community (as determined by consulting the current list of approved subdivisions regularly published by HUD and furnished to Mortgage companies) or the VA for guaranteeing any Mortgage in the Community (as determined by telephone inquiry to VA), the following actions shall require the prior approval of the VA and/or HUD, as applicable: annexation of additional property to the Community, except for annexation by Declarant in accordance with Article IX, Section 1, hereof pursuant to a plan of annexation previously approved by the VA and/or HUD, as applicable; dedication of Common Property to any public entity; mergers and consolidations; dissolution of the Association; mortgaging of Common Property; and material amendment of the Declaration, Bylaws, or Articles of Incorporation of the Association.

**Section 6. Applicability of Article X.** Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or Georgia law for any of the acts set out in this Article.

**Section 7. 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 XI** **Easements**

**Section 1. Easements for Encroachment and Overhang.** There shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and such portion or portions of the Common Property adjacent thereto or as between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than five (5) feet, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Property or as between adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, tenant, or the Association.

**Section 2. Easements for Use and Enjoyment.**

(a) Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to his Lot, subject to the following:

(i) the reservation of each Boatslip for the exclusive use or primary benefit of a Lot or various Persons, both members and nonmembers, as the Declarant and/or Board may see fit, as described in Article IV, Section 28;

(ii) the right of the Association to charge reasonable admission and other fees for the use of any portion of the Common Property, to limit the number of guests of Lot Owners and tenants who may use the Common Property, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, his family, tenants, guests, and invitees;

(iii) the right of the Association to suspend the voting rights of a Lot Owner and the right of an Owner to use the recreational facilities, including, without limitation, any marina and any Boatslips (including any Boatslip assigned to such Owner's Lot), within the Community, if any, for any period during which any assessment against such Owner's Lot which is hereby provided for remains unpaid; and, for a reasonable period of time, for an infraction of the Declaration, Bylaws, or rules and regulations;

(iv) the right of the Association to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon, and give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property; provided, however, the lien and encumbrance of any such Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant and/or its affiliates, Builders, any Lot or Lot Owner, and/or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Community (any provision in this Declaration or in any such Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, interests, options, easements or privileges herein reserved or established for the benefit of Declarant and/or its affiliates, Builders, any Lot or Lot Owner, and/or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Community); no such Mortgage given by the Association shall be effective unless an instrument agreeing to such Mortgage has been approved by Owners of at least two-thirds (2/3) of the Lots (other than Lots of Declarant so long as the consent of Declarant is required) and the consent of Declarant (so long as the Declarant owns any property for development and/or sale in the Community or has the right unilaterally to annex property to the Community); and

(v) the right of the Association to dedicate or transfer all or any portion of the Common Property subject to such conditions as may be agreed to by the members of the Association; no such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by Declarant (so long as Declarant owns any



property for development and/or sale within the Community or has the right unilaterally to annex additional property to the Community) and Owners representing at least two-thirds (2/3) of the Total Association Vote (other than Declarant so long as the consent of Declarant is required).

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

**Section 3. Easements for Utilities.** There is hereby reserved to the Association blanket easements upon, across, above and under all property within the Community for access to, ingress to, egress from, installation of, repairing, replacing, and maintaining all utilities serving the Community or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity utilities, as well as storm drainage and any other service, such as, but not limited to, a master television antenna system, cable television system, or security system, which the Declarant or Association might decide to have installed to serve the Community. It shall be expressly permissible for the Declarant, the Association, or the designees of either, as the case may be, to install, repair, replace, and maintain, or to authorize the installation, repairing, replacing, and maintaining, of such wires, conduits, cables and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Board shall have the right to grant such easement.

**Section 4. Easements for Association Maintenance.** There is hereby expressly reserved to the Association a perpetual easement across such portions of the Community, determined in the sole discretion of the Association, as are necessary to allow for the maintenance required under Article V. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment of Owners' property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

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

**Section 6. Easements for Entry.** In addition to the right of the Board to exercise self-help as provided in Article XII, Section 2 hereof, the Board shall have the right, but shall not be obligated, to enter upon any property within the Community for emergency, security, and safety reasons, which right may be exercised by the manager, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. This right of entry shall include the right of the Board to enter to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard in the event an Owner or Occupant fails or refuses to cure the condition upon request by the Board.

**Section 7. Easements for Entry Features and Street Signs.** There is hereby reserved to the Declarant, the Association, or the designees of either, an easement over and upon each Lot for ingress to, egress from, installation, construction, landscaping and maintenance of entry features and street signs for the Community. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around all entry features and the right to grade the land under and around the entry features.

**Section 8. Easements for Common Driveways.** Declarant hereby creates joint and reciprocal easements in perpetuity for vehicular and pedestrian traffic in, upon, over and across those areas, if any, shown on any plat for the Community, recorded by Declarant in the land records of the county where the Community is located, as a common driveway (or such similar or equivalent language as would indicate that such area is a common driveway among two or more Lots) (hereinafter referred to as a "Common Driveway"). These easements shall be for the benefit of any Owner of a Lot upon which a Common Driveway is located and shall be for access to and ingress and egress to and from such Owner's Lot by such Owner, and his or her family members, invitees, and designees in, upon, over and across the Common Driveway, or portion thereof, located on such Owner's Lot. Any Common Driveway shall continue to be used for this purpose by the Owners of the Lots upon which such Common Driveway is located and by the subsequent Owners and successors-in-title to such Lots. In connection with the reservation of these easements, it is acknowledged and agreed that the Owner of a Lot burdened by these easements will be required to utilize the easements for access to and ingress and egress to and from such Owner's Lot and that such easements are critical to the future use and enjoyment of such Owner's Lot. No Owner shall be allowed to change, alter or diminish the rights of an Owner of a Lot burdened by these easements to the use and enjoyment of the Common Driveway located on such Owner's Lot.

Each Common Driveway shall be cleaned, maintained, repaired and replaced as a joint effort by the Owners of the Lots upon which such Common Driveway is located. This responsibility and the cost thereof shall be shared on an equal basis by each of said Owners, notwithstanding the respective use of the Common Driveway by the Owners of the Lots upon which such Common Driveway is located. In order to protect the value of the respective Lots

and to insure the proper use and enjoyment of the respective Lots, the Owner of a Lot upon which a Common Driveway is located shall have the full and unrestricted right to cause the cleaning, maintenance, repair and replacement of the Common Driveway located on such Owner's Lot as may be necessary to insure that such Common Driveway is maintained in a good, proper and functional condition and appearance. The failure by any Owner of a Lot upon which a Common Driveway is located to pay when due his or her portion of any expense incurred by another Owner of a Lot upon which such Common Driveway is located for cleaning, maintenance, repair and replacement of such Common-Driveway shall be a violation of the covenants and restrictions set forth in this Declaration, and such nonpaying Owner shall be liable to the Owner who performed such cleaning, maintenance, repair and replacement for his or her portion of such expense, plus costs and expenses, including reasonable attorney's fees, incurred by such Owner in collecting such amount.

**Section 9. Easements for Access to Marina and Boatslips.** All Persons having the right of use of a Boatslip in accordance with the provisions of this Declaration (regardless of whether such Persons are Owners hereunder), and their guests and invitees, shall at all times have a right and non-exclusive easement of access to and use of all roadways within the Community reasonably necessary to travel from any entrance to the Community to such Boatslip and any marina of which such Boatslip is a part, and vice versa.

**Section 10. Easements for Declarant and Pedestrian Access to Lakes.**

(a) Declarant hereby expressly reserves a perpetual easement for itself and its successors and assigns on, over, across and under such portions of the Community, determined in the sole discretion of Declarant (or its successors and assigns), as is reasonably required for any maintenance of any lake, lakebed, dam or shoreline located within or adjacent to the Community which the Declarant may wish to undertake or be required to perform. Such maintenance, if performed, shall be performed with a minimum of interference to the quiet enjoyment of Owners' property, reasonable steps shall be taken to protect such property, and damage to such property shall be repaired by the Person causing the damage at its sole expense.

(b) Declarant hereby expressly reserves perpetual pedestrian easements for access to Lake Lanier and/or the U.S. Army Corps of Engineers shoreline thereof adjacent to the Community for the benefit of Declarant, its affiliates, the Association and the Owners, if and to the extent any such easements are shown on any plat for the Community recorded by the Declarant in the land records of the county where the property containing such easements is located.

**Article XII**  
**General Provisions**

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

**Section 2. Self-Help.** In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon a Lot or any portion of the Common Property to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates this Declaration, the Bylaws, the rules and regulations, or the use restrictions. Unless an emergency situation exists, the Board shall give the violating Lot Owner ten (10) days' written notice of its intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after reasonable notice. All costs of self-help, including reasonable attorney's fees actually incurred shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of assessments.

**Section 3. Duration.** The covenants and restrictions of this Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent permitted by law; provided, however, if Georgia law limits the period during which covenants restricting lands to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, after which time any such provisions shall be (a) automatically extended for successive periods of ten (10) years, unless a written instrument reflecting disapproval signed by the then Owners of at least two-thirds (2/3) of the Lots and the Declarant (so long as the Declarant owns any property for development and/or sale in the Community or has the right unilaterally to annex additional property to the Community) has been recorded within the year immediately preceding the beginning of a ten (10) year renewal period agreeing to change such provisions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated to the extent specified therein; or (b) extended as otherwise provided by law.

Every purchaser or grantee of any interest (including, without limitation, a security interest) in any real property subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that such provisions of this Declaration may be extended and renewed as provided in this Section.

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

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of Owners of at least two-thirds (2/3) of the Lots (other than Lots of Declarant so long as the consent of Declarant is required) and the consent of Declarant (so long as the Declarant owns any property for development and/or sale in the Community or has the right unilaterally to annex additional property to the Community). Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified therein. No provision of this Declaration which reserves or grants special rights to the Declarant, its affiliates and/or Builders shall be amended without the prior written consent of the Declarant and any affiliates and/or Builders affected by such amendment, so long as the Declarant and/or such affiliates and Builders, as the case may be, own any property primarily for development and/or sale in the Community or subject to annexation by the Declarant to the Community.

Any lawsuit challenging any aspect of an amendment to this Declaration must be filed in a court of competent jurisdiction in the county in which the Community is located within one (1) year of the recordation of such amendment.

**Section 5. Gender and Grammar.** The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

**Section 6. Severability.** Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any Person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

**Section 7. Captions.** The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

**Section 8. Conveyance of Common Property to Association: Assignment of Contracts.** The Declarant and its affiliates may transfer or convey to the Association any personal property and any improved or unimproved real property, leasehold, easement, or other property interest. 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 or a part of its members. Declarant and its affiliates shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section. The Association shall also accept assignment of, and shall assume and agree to perform, any contracts entered into by the Declarant and its affiliates for the benefit of the Association or the Owners, including, without limitation, detention pond maintenance agreements, central septic system maintenance agreements and all types of utility easements.

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

**Section 10. Indemnification.** In accordance with, and to the full extent allowed by, the Georgia Nonprofit Corporation Code, the Association shall indemnify every Person who was or is a party or who is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association), by reason of the fact that such Person is or was serving as a director or officer of the Association against any and all expenses, including attorney's fees, imposed upon or reasonably incurred in connection with any action, suit, or proceeding, if such Person acted in a manner reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Any

indemnification hereunder shall be made by the Association only as authorized in a specific case upon a determination that indemnification of the Person is proper under the circumstances.

**Section 11. Construction and Sale Period.** Notwithstanding any provisions contained in this Declaration, the Bylaws, Articles of Incorporation of the Association, rules and regulations, use restrictions, and any amendments to any of the foregoing, the Declarant hereby expressly reserves unto itself, its successors and assigns, and Builders specifically approved by Declarant in its sole discretion to exercise the rights set forth in this Section, a non-exclusive, perpetual right, privilege, and easement with respect to the Community for the benefit of the Declarant, its successors and assigns, and such Builders over, under, in, and/or on the Community, without obligation and without charge to the Declarant or such Builders, for the purposes of taking all actions related to or connected with construction, installation, relocation, development, sale, maintenance, repair, or replacement in the Community and any other property now owned or which may in the future be owned by the Declarant or such a Builder (such other property is hereinafter referred to as "Additional Property"). The reserved easement shall constitute a burden on the title to the Community and specifically includes, but is not limited to:

(a) the right of access, ingress, and egress for vehicular and pedestrian traffic over, under, on, or in the Community; and the right to tie into any portion of the Community with streets, driveways, parking areas, and walkways; and the right to tie into and/or otherwise connect and use (without a tap-on or any other fee payable to the Association or any Owner for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer, and drainage lines and facilities constructed or installed in, on, under, and/or over the Community;

(b) the right to use (continually or from time to time) without charge any clubhouse or similar structure and appurtenant recreational facilities, if any, constructed in the Community for business purposes or company functions and any similar use, including, but not limited to, sales and marketing meetings, offices for sales or other employees and agents, a design studio, and employee parties; and

(c) the right to construct, install, replace, relocate, maintain, repair, use, and enjoy signs, model residences, construction trailers, and sales offices in the Community.

No rights, privileges, and easements granted or reserved herein shall be merged into the title of any property, including, without limitation, the Community, but shall be held independent of such title, and no such right, privilege, or easement shall be surrendered, conveyed, or released unless and until and except by delivery of a quitclaim deed from the Person so releasing such right, privilege, or easement which releases such right, privilege, or easement by express reference thereto.

If these reserved easements are exercised without annexing any Additional Property to the Community, the owners of the affected Additional Property shall share the costs, if any, of using and maintaining utility and similar facilities, including, without limitation, electrical, telephone, natural gas, water, sewer, and drainage lines and facilities with the Owners in the Community in the proportion that the number of completed dwellings on the affected Additional Property bears to the sum of the number of completed dwellings on the affected Additional Property plus the number of Lots in the Community. The costs of maintenance and repair of Community streets and driveways shall likewise be apportioned to the affected Additional Property if the only means of vehicular access to the affected Additional Property is across the Community. For the purposes of this provision, a dwelling on the affected Additional Property shall be considered completed when a certificate of occupancy has been granted. The allocation of expenses and the collection therefor may be done on a monthly, quarterly, or annual basis as may reasonably be determined by the Association in accordance with this Declaration. If any of the Additional Property is added to the Community, from the time of the annexation, the sharing of costs and expenses and the use of any property so added shall be governed by this Declaration, rather than by these reserved easements.

This Section shall not be amended without the prior written consent of the Declarant and any Builders affected by such amendment, so long as the Declarant and/or such Builders, as the case may be, own any property primarily for development and/or sale in the Community or subject to annexation by the Declarant to the Community.

#### **Section 12. Books and Records.**

(a) Inspection by Members and Mortgagees. This Declaration, the Bylaws, copies of rules and use restrictions, membership register, books of account, and minutes of meetings of the members of the Board and of committees shall be made available for inspection and copying by any member of the Association or by his duly appointed representative and by holders, insurers, or guarantors of any first Mortgage at any reasonable time and for a purpose reasonably related to his or her interest as a member or holder, insurer, or guarantor of a first Mortgage at the office of the Association or at such other reasonable place as the Board shall prescribe.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing copies of documents.



(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extra copies of documents at the reasonable expense of the Association.

**Section 13. Financial Statements.** Financial statements- for the Association shall be compiled annually in the manner as the Board of Directors may decide; provided, however, after having received the Board's financial statements at the annual meeting, the Owners, by a Majority vote, may require that the financial statements of the Association be audited as a common expense by a certified public accountant. Upon written request of any institutional holder of a first Mortgage and upon payment of all costs associated therewith, such holder shall be entitled to receive a copy of the audited financial statements of the Association within ninety (90) days of the date of the request.

**Section 14. Notice of Sale or Lease.** In the event an Owner sells or leases his or her Lot, the Owner shall give to the Association, in writing, the name of the purchaser or lessee of the Lot and such other information as the Board may reasonably require.

**Section 15. Agreements.** Subject to the prior approval of Declarant, so long as the Declarant has an option to unilaterally subject additional property to this Declaration as provided in Article IX above, all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

**Section 16. Variances.** Notwithstanding anything to the contrary contained herein, the Board of Directors or its designed shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Community.

**Section 17. Litigation.** No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least seventy-five percent (75%) of the Total Association Vote. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided in Article IV hereof, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made by the Declarant pursuant to Article XII, Section 4

hereof, or is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

**Section 18. Implied Rights.** The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

**Section 19. Use of Recreational Facilities By Nonmembers.** For so long as Declarant has an option to unilaterally subject additional property to this Declaration as provided in Article IX above, Declarant shall have the right to grant to persons who are not members of the Association the right to use the Community recreational facilities, including, without limitation, any Boatslips and any marina of which the Boatslips are a part (if any). The extent and duration of nonmember use and the fee to be charged therefor shall be determined solely by Declarant. The Declarant may grant nonmember use rights to individuals as an easement appurtenant to such individuals' residential real property so that such use rights shall automatically inure to the benefit of both the original grantees and their respective successors-in-title to such real property. For so long as Declarant owns such recreational facilities, nonmember user fees shall be paid to Declarant. If such recreational facilities are conveyed to the Association, nonmember user fees due and payable after the date of such conveyance shall be paid to the Association. Declarant shall determine the amount of nonmember user fees which are due and payable after such conveyance. Such fees shall be paid in equal annual installments to the Association, unless otherwise determined by the Board. The amount of such installment payments may be increased each year by the Board so long as the percentage increase (as compared to the previous year's installment) does not exceed the percentage increase in the annual assessment levied against members of the Association (as compared to the previous year's assessment).

Unless otherwise determined by the Declarant, any use right granted to nonmembers which extends beyond the termination of Declarant's option to unilaterally subject additional property to this Declaration shall be valid and may not be terminated by the Association so long as the terms and conditions imposed upon nonmember use by Declarant are complied with by the nonmember user.

Declarant hereby expressly reserves unto itself, its successors and assigns a non-exclusive, perpetual right, privilege and easement with respect to the Community for the benefit of Declarant, its successors, assigns and the above discussed nonmember users, over, under, in and/or on the Community (including, without limitation, the above described recreational facilities), without obligation and without charge to the foregoing, for the purposes of taking all actions related to or connected with the granting of nonmember use and the use by such nonmembers as described above. Such right, privilege and easement shall include, without limitation, the right of access, ingress, use and egress of and to the above

described recreational facilities and the right of access, ingress, use and egress for vehicular and pedestrian traffic over, under, on or in the Community roads, parking areas and walkways.

Declarant, its partners and affiliates, and the officers, directors, shareholders, employees, agents, successors and assigns of any of the foregoing, shall not be liable for and are hereby held harmless by the Association from any failure of any nonmember to pay a nonmember user fee to the Association where required to do so by this Section. In such case, the Association's sole remedy shall be to suspend the use right of the nonmember who has not timely paid until all amounts owed are paid. Declarant, its partners and affiliates, and the officers, directors, shareholders, employees, agents, successors and assigns of any of the foregoing, shall also not be liable for and are hereby held harmless by the Association from any personal injury or property damage caused by a nonmember entitled to use the Community recreational facilities.

So long as Declarant has an option to unilaterally subject additional property to this Declaration as provided in Article IX above, Declarant shall have the sole right to grant use rights to the Community recreational facilities to nonmembers and the Board shall have no such right; provided, however, upon the expiration or earlier surrender in writing of this option, the Board shall have the rights of the Declarant set forth in this Section, subject to then existing nonmember use rights. The provisions of this Section shall apply notwithstanding any contrary provisions in this Declaration, the Bylaws, Articles of Incorporation, rules and regulations, use restrictions and any amendments to any of the foregoing.

**Section 20. Security.** The Declarant and the Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to make the Community and the Lots safer than they otherwise might be. HOWEVER, THE ASSOCIATION, THE DECLARANT, ITS PARTNERS AND AFFILIATES, ANY SUCCESSOR DECLARANT, AND BUILDERS, AND THE OFFICERS, DIRECTORS, COMMITTEES, MEMBERS, SHAREHOLDERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS OF ANY OF THE FOREGOING, SHALL NOT IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE COMMUNITY, NOR SHALL ANY OF THE FOREGOING BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR OF INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY GATED OR CONTROLLED-ACCESS ENTRANCE TO THE COMMUNITY, FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND COVENANTS TO INFORM ITS TENANTS THAT THE ASSOCIATION, THE

DECLARANT, ITS PARTNERS AND AFFILIATES, ANY SUCCESSOR DECLARANT, AND BUILDERS, AND THE OFFICERS, DIRECTORS, COMMITTEES, MEMBERS, SHAREHOLDERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS OF ANY OF THE FOREGOING, ARE NOT INSURERS AND THAT EACH PERSON USING THE COMMUNITY ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO PROPERTY, TO LOTS, AND TO THE CONTENTS OF LOTS AND THE STRUCTURES THEREON RESULTING FROM ACTS OF THIRD PARTIES.

In addition, without limiting the foregoing, so long as the Declarant owns any property primarily for development and/or sale in the Community or has the right to unilaterally annex additional property to the Community, Declarant hereby reserves the right to manage, in its sole discretion, all aspects of any gated or controlled-access entrance(s) to the Community, including, without limitation, the hours during which such gated or controlled-access entrance(s) may be continuously open to facilitate sales-related traffic.

IN WITNESS WHEREOF, the undersigned has executed this instrument and affixed seals as of the 9th day of June, 1997.

Lanier Joint Venture, a Georgia general partnership

Signed, sealed and delivered in the presence of:

By: Hardeman Properties, Inc., a Georgia corporation

By: [Signature]

Print Name: \_\_\_\_\_

Title: President

[CORPORATE SEAL]

[Signature]  
Witness  
[Signature]  
Notary Public  
My commission expires Dec. 9, 2000  
Notary Public, Hall County, Georgia  
My Commission Expires Dec. 9, 2000  
[NOTARIAL SEAL]

Signed, sealed and delivered in the presence of:

By: John Wieland Homes, Inc., a Georgia corporation

By: [Signature]

Dan Fields  
Assistant Secretary

[CORPORATE SEAL]

[Signature]  
Witness  
[Signature]  
Notary Public  
My commission expires JUNE 9, 2000  
[NOTARIAL SEAL]  
MOLLISE  
NOTARY  
EXPIRES  
GEORGIA  
JUNE 9, 2000  
PUBLIC  
DeKALB COUNTY

[CORPORATE SEAL]  
WIELAND HOMES, INC.  
SEAL  
JCH

## EXHIBIT "A"

### Definitions

The following words, when used in this Declaration or in any amendment thereof (unless the context shall prohibit), shall have the following meanings:

(a) "Association" shall mean and refer to Harbour Point Community Association, Inc., a nonprofit Georgia corporation, its successors and assigns.

(b) "Board of Directors" or "Board" of the Association shall be the appointed or elected body, as applicable, having its normal meaning under Georgia corporate law.

(c) "Boatslip" shall mean the boatslips, if any, constructed by or on behalf of the Declarant over the waters of Lake Lanier in conjunction with the development of the Community, and which are owned or controlled by Declarant and/or the Association.

(d) "Builder" shall mean any Person which purchases and/or has purchased more than one (1) Lot for the sole purpose of constructing improvements thereon for later sale to consumers, or purchases parcels of land within the Community for further subdivision, development and/or resale, all in the ordinary course of such Person's business.

(e) "Bylaws" shall refer to the Bylaws of Harbour Point Community Association, Inc., attached to this Declaration as Exhibit "D" and incorporated herein by this reference.

(f) "Common Property" shall mean any and all real and personal property and easements and leaseholds and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned by the Association. The term shall specifically include, without limitation, any private roads, and any Boatslips and any marina of which the Boatslips are a part, which are now or hereafter owned by the Association.

(g) "Community" shall mean and refer to that certain real property and interests therein described in Exhibit "B", attached hereto, and (i) such additions thereto as may be made by Declarant (or its Mortgagee or transferee, as provided in the Declaration) of all or any portion of the real property described in Exhibit "C", attached hereto; and (ii) such additions thereto as may be made by the Association (as provided in the Declaration) of other real property.

(h) "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association. Such determination, however, must be consistent with the Community Wide Standard originally established by the Declarant.

(i) "Declarant" shall mean and refer to Lanier Joint Venture, a Georgia general partnership, and its successors-in-title and assigns, provided any such successor-in-title or assign shall acquire for the purpose of development or sale all or any portion of the remaining undeveloped or unsold portions of the real property described in Exhibit "B", attached hereto, or in Exhibit "C", attached hereto, 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 such successor Declarant, all rights 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 "B", attached hereto, and in Exhibit "C", attached hereto, 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 point in time.

(j) "Lake Lot" shall mean a Lot containing any real property which abuts Lake Lanier or the U.S. Army Corps of Engineers shoreline of Lake Lanier.

(k) "Lot" shall mean any plot of land within the Community, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single dwelling site as shown on the plat for the Community, or amendments thereto, recorded in the land records of the county where the Community is located. This specifically includes any plot of land within the Community containing a single-family attached or detached townhouse residence, all as shown on plats for the Community as aforesaid.

Such single-family attached or detached townhouse residences may include any porch, deck, sunroom or any similar appurtenance as may be attached to such residence when such residence is initially constructed. These appurtenances may encroach upon the Common Property, but such encroachments are a benefit, rather than a detriment, to the Community. Consequently, such appurtenances shall be considered a part of the Lot for such residence, maintained as provided in the Declaration, and allowed to encroach upon the Common Property; provided, however, no such appurtenant structure may be altered, changed or enlarged except in accordance with Article VI, Section 10, and any other pertinent provisions, of the Declaration.

The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, all of the right, title, and interest of an Owner in the Common Property, which shall include, without limitation, membership in the Association.

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

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

(n) "Mortgagee" shall mean the holder of a Mortgage.

(o) "Occupant" shall mean any Person occupying all or any portion of a Lot or other property located within the Community for any period of time, regardless of whether such Person is a tenant of the Owner of such property.

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

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

(r) "Supplementary Declaration" means an amendment or supplement to this Declaration which subjects additional property to this Declaration or imposes, expressly or by reference, additional restrictions and obligations on the land described therein, or both.

(s) "Total Association Vote" means all of the votes attributable to members of the Association (including votes of Declarant) and the consent of Declarant (so long as Declarant owns any property for development and/or sale in the Community or has the right unilaterally to annex additional property to the Community).

**EXHIBIT "B"**Property Submitted

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lots 21, 37 and 38 of the 10th District, Hall County, Georgia, and being known as Harbour Point, Unit I, as shown on the Final Subdivision Plat for Harbour Point, Unit I, dated January 16, 1997, last revised March 31, 1997, prepared by Rochester & Associates, Inc., certified by and bearing the seal of James C. Jones, Georgia Registered Land Surveyor No. 2298, and recorded in Plat Slide 615, Page 234A of the Hall County, Georgia land records.

Together with:

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 21 of the 10th District, Hall County, Georgia, and being known as Harbour Point, Unit II, as shown on the Final Subdivision Plat for Harbour Point, Unit II, dated November 20, 1996, prepared by Rochester & Associates, Inc., certified by and bearing the seal of James C. Jones, Georgia Registered Land Surveyor No. 2298, and recorded in Plat Slide 600, Page 89A of the Hall County, Georgia land records.



Return to:  
Jonathan F. Young  
1950 Sullivan Road  
Atlanta, GA 30337

Mail: John Wieland Homes Inc  
1950 Sullivan Rd  
Atlanta GA 30337

**OWNER CONSENT TO DECLARATION OF  
PROTECTIVE COVENANTS FOR HARBOUR POINT**

John Wieland Homes, Inc., a Georgia corporation (the "Owner"), is the owner of those certain tracts or parcels of land lying and being in Land Lots 21, 37 and 38 of the 10th District, Hall County, Georgia, being more particularly described as follows:

All that tract or parcel of land lying and being in Land Lots 21, 37 and 38 of the 10th District, Hall County, Georgia, and being Lots 4, 5, 6, 10, 11, 13, 22, 23, 33, 34, 35 and 36, Harbour Point, Unit I, as per plat thereof recorded in Plat Slide 615, Page 234A, Hall County, Georgia land records;

Together with:

All that tract or parcel of land lying and being in Land Lot 21 of the 10th District, Hall County, Georgia, and being Lot 51, Harbour Point, Unit II, as per plat thereof recorded in Plat Slide 600, Page 89A, aforesaid records

(collectively, the "Property").

Owner desires to consent to that certain Declaration of Protective Covenants for Harbour Point ("Declaration"), recorded by Lanier Joint Venture contemporaneously herewith in the Hall County, Georgia land records, by which Lanier Joint Venture, as the declarant under the Declaration, is subjecting certain real property as described in the Declaration, including the Property, to the terms, provisions, covenants, restrictions and easements of the Declaration.

Owner does hereby declare and consent, on behalf of Owner, Owner's personal representatives, successors, heirs, and assigns, to the Declaration, and agrees on behalf of each of the foregoing, that from and after the date the Declaration is recorded, the Property shall be owned, held, transferred, sold, conveyed, used, occupied, mortgaged, or otherwise encumbered subject to all of the terms, provisions, covenants, and restrictions contained in the Declaration, all of which shall run with the title to the Property and shall be binding upon all persons having any right, title, or interest in the Property, their respective heirs, legal representatives, successors, successors-in-title, and assigns.

IN WITNESS WHEREOF, the undersigned Owner executes this Consent under seal this 9<sup>th</sup> day of June, 1997.

OWNER:

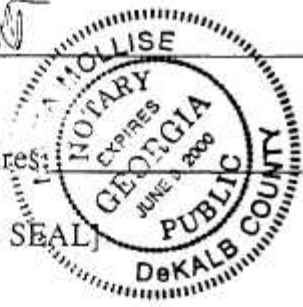
Signed, sealed and delivered in the presence of:

Eileen J. Rivera  
Witness

[Signature]  
Notary Public

My commission expires:

[NOTARIAL SEAL]



John Wieland Homes, Inc., a Georgia corporation

By: Dan Fields  
Dan Fields  
Assistant Secretary



[CORPORATE SEAL]

s:\legal\anx\harbour.own  
rev. 053097

Georgia, Hall County, Clerk Superior Court  
Filed in office, this 11 day of June  
19 97 at 4:35 P m. Recorded in  
Book 2895 Page(s) 265 + 266  
this 12 day of June, 19 97.  
DWIGHT S. WOOD, CLERK, by: K.L.

**POLICIES FOR ACQUISITION AND**  
**TRANSFER OF PRIVATE BOATSLIP PRIVILEGES**  
**HARBOUR POINT COMMUNITY ASSOCIATION, INC.**

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**POLICIES FOR ACQUISITION AND  
TRANSFER OF PRIVATE BOATSLIP PRIVILEGES  
HARBOUR POINT COMMUNITY ASSOCIATION, INC.**

The Harbour Point Community Association, Inc. ("Association"), is a Georgia nonprofit corporation which is responsible for the operation of the property and facilities known as the Harbour Point Marina ("Marina").

This document sets forth the terms and conditions for acquisition and transfer of Private Boatslip Privileges for the right to use Marina boatslips. These Policies, including the terms and privileges of acquisition, use and transfer of Private Boatslip Privileges, are subject to change from time to time in the sole and absolute discretion of the Board of Directors of the Association ("Board"), subject to Section 3.2.

**Article I  
DEFINITIONS**

The terms used in this document shall be defined' as set forth below, unless the context requires otherwise. Undefined terms shall be given their natural, generally accepted definitions.

1.1. "Community" shall mean the residential community known as Harbour Point, which is located in Gainesville, Hall County, Georgia, and includes all that real property which has been subjected, or which may hereafter be subjected, to that certain Declaration of Protective Covenants for Harbour Point dated June 9, 1997, and recorded in Deed Book 2895, Page 203, et seq., in the Hall County, Georgia land records ("Declaration").

1.2. "Declarant" shall mean Lander Joint Venture, a Georgia general partnership, and as further described and defined in the Declaration.

1.3. "Family" shall mean the spouse of the User and the unmarried children of such spouse or User under the age of 23 who maintain the same principal residence as the User, are full-time students, or are in the United States armed forces.

1.4. "Owner" shall mean the record owner, whether one or more Persons, of the fee simple title to any Unit, as defined in Section 1.6, excluding Declarant, any builder, and any Person holding title merely as security for the performance or satisfaction of an obligation.

1.5. "Person" shall mean a natural person, a corporation, a partnership, a trust, or any other legal entity.

1.6. "Unit" shall mean any residential dwelling unit, or any real property intended to be improved with a residential dwelling unit, located within the Community. In the case of any real property improved with a building which contains more than one dwelling unit, each dwelling unit shall constitute a separate "Unit" hereunder.

1.7. "User" shall mean the Person(s) in whose name a Private Boatslip Privilege has been issued.

## **Article II**

### **ACQUISITION AND TRANSFER**

#### 2.1. Private Boatslip Privileges.

(a) General. Any Owner shall be eligible to acquire a Private Boatslip Privilege; provided, however, there may be no more than one (1) Private Boatslip Privilege associated with any Unit or with any Marina boatslip and there shall be deemed to be no more than one (1) User per Private Boatslip Privilege. Private Boatslip Privileges will be issued subject to availability and Sections 2.2 and 2.3.

Except as provided in Section 2.1(b), a Private Boatslip Privilege shall entitle the User and his or her Family to use of such User's designated boatslip and all of the other Marina facilities (except other Users' boatslips) during operating hours, as determined by the Association, acting through the Board, on an availability basis; provided, however, there shall not be more than one (1) boat and one (1) other personal watercraft of any kind in any boatslip at any time and all boats and watercrafts in a boatslip must at all times be within the confines of the boatslip. Use of such User's designated boatslip and the Marina facilities shall be subject to such rules and regulations, payment of such use charges for various privileges or services, and payment of assessments under the Declaration and use charges, as are established by the Board from time to time, as well as subject to such rules and regulations associated with the Association's license for the Marina as are established by the U.S. Army Corps of Engineers from time to time.

(b) Joint Ownership of Unit. Except in the case of Units owned by husband and wife, if a Unit is owned by more than one (1) Person, whether related or not, and such Owners acquire a Private Boatslip Privilege to be associated with such Unit, such Owners may designate up to two (2) individuals in writing to the Board who will have the right to use the designated boatslip and the Marina facilities. Such Owners may change the designations upon written notice to the Board and payment of a non-refundable administrative fee, if any, established by the Board from time to time. The Board may limit the number of times such Owners may change the designations.

2.2. Availability. Unless the U. S. Army Corps of Engineers authorizes additional Marina boatslips (which, at present, is unlikely), there shall be no more than two hundred twenty-eight (228) Marina boatslips and, therefore, no more than two hundred twenty-eight (228) Private Boatslip Privileges; provided, however, the Board shall have the right to reserve up to four (4) Marina boatslips for use as courtesy docks, the Declarant shall have the right to reserve Private Boatslip Privileges for acquisition by Owners of specific Units and/or for specific phases of the development of the Community, and the Declarant shall have the right to

grant temporary use rights in and to Marina boatslips to such Persons, and on such terms and conditions, as the Declarant sees fit in its sole and absolute discretion.

2.3. Acquisition of Private Boatslip Privilege and Private Boatslip Privilege Fee.

(a) General. Until all of the Private Boatslip Privileges to be issued have been issued initially, except as Sections 2.5(e) and (f) may apply, each Person desiring to acquire a Private Boatslip Privilege must acquire such Private Boatslip Privilege from Declarant, pay to Declarant the then current Private Boatslip Privilege Fee (which for Owners is essentially a lot or property premium) associated with the desired boatslip as established by the Declarant, and fully sign as required a Private Boatslip Privilege acquisition agreement. Subject to availability, the first Owner of each Unit in the Community shall have from the date of execution of a contract for the purchase of such Unit until the date of closing of the purchase of such Unit, or until forty-five (45) days after the date any Marina boatslips are available for use, whichever is later, in order to select a boatslip from those available and acquire a Private Boatslip Privilege (although, unless otherwise determined by Declarant or the Board, as applicable, Private Boatslip Privileges will actually be issued, and the Private Boatslip Privilege Fee will actually be paid, at such closing, and such Person's right to acquire a Private Boatslip Privilege shall terminate if such Person does not actually become an Owner). Thereafter, acquisition of a Private Boatslip Privilege by such Owner will be subject to availability. If a Private Boatslip Privilege is not available, the Person shall be placed on the waiting list for Private Boatslip Privileges in accordance with the procedures set forth in Section 2.3(b).

Until all of the Private Boatslip Privileges to be issued have been issued initially, all Private Boatslip Privilege Fees shall be established by Declarant; in addition, all Private Boatslip Privilege Fees for the initial issuance of all Private Boatslip Privileges shall be paid to Declarant. Thereafter, any Private Boatslip Privilege Fees shall be established by and paid to the Association.

(b) Waiting List. Only Persons in good standing with the Association shall be eligible to remain on the waiting list for Private Boatslip Privileges. Any Person who fails to remain in good standing with the Association shall be dropped from the waiting list. The Board may, in its sole discretion, charge a non-refundable administrative fee for the privilege of being placed on the waiting list.

Upon a Private Boatslip Privilege becoming available, the Board shall promptly notify the Person having priority on the waiting list to acquire such Private Boatslip Privilege. Such notice shall state that the Person shall have twenty-one (21) days within which to submit written notice of his or her intent to accept such Private Boatslip Privilege, together with payment of the applicable Private Boatslip Privilege Fee then being charged and a fully signed as required Private Boatslip Privilege acquisition agreement. Upon receipt of the required notice, fee and agreement, the Association shall notify the Person of his or her acquisition of a

Private Boatslip Privilege and the designated boatslip to be used by such Owner.

Any Person who is on the waiting list and is notified of the availability of a Private Boatslip Privilege, but who fails to submit, within twenty-one (21) days after receipt of the notice of availability, written notice of his or her intent to accept such Private Boatslip Privilege, together with the required fee and agreement, shall be dropped from the waiting list.

2.4. Transfer and Assignment of Private Boatslip Privilege. No Person shall have any right to sell, pledge, hypothecate, assign or otherwise transfer or encumber a Private Boatslip Privilege, except to an institutional lender to secure purchase money financing for such Private Boatslip Privilege, provided the Private Boatslip Privilege secures no more than the Private Boatslip Privilege Fee for the acquisition of such Private Boatslip Privilege.

2.5. Termination and Resignation of Private Boatslip Privilege and Repayment of Private Boatslip Privilege Fee.

(a) General. Except as provided in Section 2.4, Private Boatslip Privileges may have been issued may be transferred only to or through the Association in accordance with this Section and Section 2.6.

(b) Termination. Private Boatslip Privileges shall automatically terminate as of the date the User ceases to be an Owner. Terminated Private Boatslip Privileges must be surrendered to the Association for acquisition in accordance with this Section 2.5. Termination shall be effective as of the date the User ceases to be an Owner, subject to actual acquisition of the Private Boatslip Privilege by the Association and reissuance as provided in Section 2.5(e), unless otherwise determined in the sole and absolute discretion of the Board. All identification cards and boatslip certificates issued to such User and his or her Family must be returned to the Association no later than five (5) days after such date. The terminated User shall be liable for payment of all assessments under the Declaration and use charges through such date and until all identification cards and boatslip certificates are received by the Association. All outstanding use charges and assessments owed to the Association are due and payable in full as of such date.

(c) Resignation. The User may resign a Private Boatslip Privilege by giving written notice to the Board. Resigned Private Boatslip Privileges must be surrendered to the Association for acquisition in accordance with this Section 2.5. Resignation shall be effective upon the actual acquisition and reissuance of the Private Boatslip Privilege by the Association as provided in Section 2.5(e), unless otherwise determined in the sole and absolute discretion of the Board. The resigning User shall continue to be entitled to all privileges associated with such User's Private Boatslip Privilege until the effective date of such resignation. All identification cards and boatslip certificates issued to such User and his or her Family must be returned to the Association no later than five (5) days after such resignation has become effective. The resigning User shall be liable for payment of all assessments under the



Declaration and use charges, as determined by the Board, through the effective date of resignation and until all identification cards and boatslip certificates are received by the Association. All outstanding use charges and assessments owed to the Association are due and payable in full upon the effective date of resignation.

(d) Refund Upon Resignation or Termination. Upon acquisition and reissuance in accordance with Section 2.5(e), the Association will repay to the resigning or terminating User the greater of (a) the Private Boatslip Privilege Fee actually paid by such User or (b) eighty percent (80%) of the Private Boatslip Privilege Fee then being charged for the applicable Private Boatslip Privilege, as established by the Declarant or the Association, as the case may be, as of the date of reissuance of the User's Private Boatslip Privilege. For so long as Declarant has the right to appoint or remove the directors and officers of the Association pursuant to Article III, Section 2 of the bylaws of the Association, the difference, if any, between the amount repaid and the applicable Private Boatslip Privilege Fee being charged on the date of reissuance (and paid by the subsequent acquirer of the Private Boatslip Privilege) shall be paid to Declarant; thereafter, any such difference shall be paid to the Association.

EXAMPLES

1. If Private Boatslip Privilege Fee Stays the Same

Amount Actually Paid	\$25,000
Fee being charged on date of reissuance	\$25,000
Refund is greater of amount actually paid (\$25,000) or 80% of fee then being charged on date of reissuance (\$20,000)	
Refund is	\$25,000

2. If Private Boatslip Privilege Fee Increases

Amount Actually Paid	\$25,000
Fee being charged on date of reissuance	\$35,000
Refund is greater of amount actually paid (\$25,000) or 80% of fee then being charged on date of reissuance (\$28,000)	
Refund is	\$28,000

3. If Private Boatslip Privilege Fee Decreases

Amount Actually Paid	\$25,000
Fee being charged on date of reissuance	\$20,000

Refund is greater of amount actually paid (\$25,000) or 80% of fee then being charged on date of reissuance (\$16,000)	
Refund is	\$25,000

(e) Timing of Acquisition and Refund. The Association must acquire resigned or otherwise terminated Private Boatslip Privileges in accordance with this Section 2.5, but the Association shall be obligated to acquire and reissue a resigned or otherwise terminated Private Boatslip Privilege and repay the applicable Private Boatslip Privilege Fee only after all of the Private Boatslip Privileges to be issued have been issued initially and there is an individual waiting to acquire the resigned or otherwise terminated Private Boatslip Privilege and willing to pay the applicable Private Boatslip Privilege Fee then being charged for such Private Boatslip Privilege and fully sign as required a Private Boatslip Privilege acquisition agreement. Prior to that event, resigned or otherwise terminated Private Boatslip Privileges will be placed on a waiting list to be reissued on a first-resigned, first-reissued basis. However, only when there are resigned or otherwise terminated Private Boatslip Privileges on such waiting list, the Association, working with the Declarant, shall acquire and reissue one (1) resigned or terminated Private Boatslip Privilege for every five (5) Private Boatslip Privileges issued by the Declarant. The Board may, in its sole discretion, charge a non-refundable administrative fee for any acquisitions and reissuances hereunder.

(f) Reissuance to Owner of Unit. The User who owns a Unit in the Community may arrange, subject to the prior approval of the Board (such approval not to be withheld if such arrangements are in accordance with these Policies), for the Association to acquire the Private Boatslip Privilege and reissue it to the subsequent purchaser of the User's Unit in the Community (although such Private Boatslip Privilege will not actually be reacquired and reissued until closing or thereafter, and such subsequent purchaser's right to acquire a Private Boatslip Privilege shall terminate if such Person does not actually become an Owner). Such arrangements may be made regardless of whether all Private Boatslip Privileges have been issued initially and whether there is a waiting list for Private Boatslip Privileges, provided the subsequent purchaser has paid the required Private Boatslip Privilege Fee to the Association and fully signed as required a Private Boatslip Privilege acquisition agreement, and the arrangements for repurchase and reissuance are made not later than sixty (60) days after the closing of the sale of the Unit to said subsequent purchaser. The Board may, in its sole discretion, charge a non-refundable administrative fee for such reissuances. Except for the foregoing, which applies in the case of the reissuance of a Private Boatslip Privilege to the subsequent purchaser of a Unit, the provisions of Sections 2.5(b), (d) and (e) shall apply to such reissuances.

(g) Sanctions. The Association, acting through the Board, may suspend the use rights associated with a Private Boatslip Privilege for any period during which any assessment under the Declaration or use charge owed on account or on behalf of such Private Boatslip Privilege remains delinquent, and for a reasonable period of time for an infraction of the

Declaration or the Association's bylaws or rules and regulations. If any such delinquency lasts longer than six (6) months, or in the event of repeated infractions, all as determined in the sole and absolute discretion of the Board, the Board may, without liability to anyone, deem such Private Boatslip Privilege to be resigned and reissue it as the Board may see fit in accordance with this document. The further provisions of this document regarding resignation shall also apply in such event.

2.6. Transfer of Private Boatslip Privilege on Death or Divorce.

(a) Death. In the event of the death of a User, the Person who becomes the record owner of the deceased User's Unit In the Community may apply to the Board to have the deceased User's Private Boatslip Privilege transferred through the Association to him or her, subject to approval of the Board, the payment of a non-refundable administrative fee, if any, established by the Board from time to time, and full signing as required of a Private Boatslip Privilege acquisition agreement.

If such Person does not have such Private Boatslip Privilege transferred through the Association to him or her within 90 days after the deceased User's death or if the Board does not approve such transfer, the Private Boatslip Privilege shall be deemed resigned. In such event, the Private Boatslip Privilege will be acquired by the Association and reissued in the same manner as any other resigned Private Boatslip Privilege, as described in Section 2.5. Upon the acquisition and reissuance of the Private Boatslip Privilege by the Association, the Private Boatslip Privilege Fee will be repaid as set forth in Section 2.5 to the deceased User's estate. The deceased User's estate shall be responsible for payment of all assessments under the Declaration and use charges, as determined by the Board, on the deceased User's account until the effective date of resignation of such Private Boatslip Privilege or until the transfer of such Private Boatslip Privilege to the Person who becomes the record owner of the deceased User's Unit in the Community, as provided herein.

(b) Divorce. In the event a User and his or her spouse are legally separated or divorced, the Private Boatslip Privilege, including all rights and benefits given to the holder thereof, shall vest (through the Association, if necessary, to change the name of the User, subject to the payment of a non-refundable administrative fee, if any, established by the Board from time to time) in the spouse awarded record title to such User's Unit in the Community. Both of the divorced or legally separated persons shall be required to give written notice to the Association designating the person who is entitled to the privileges of the Private Boatslip Privilege immediately after the divorce or legal separation. Until written notice has been provided to the Association, both of the spouses shall remain responsible for the payment: of all assessments under the Declaration and use charges associated with the Private Boatslip Privilege.

2.7. Identification Card. An identification card indicating the name of the User, an account number (if any), and the name of the authorized users, shall be issued to the User and

to the members of his or her Family. Identification cards will not be issued to children under the age of ten (10). Users and their Family members must have their identification cards with them at all times while using the Marina.

**Article III**  
**GENERAL**

3.1. Tax Issues. The Association and the Declarant make no representations and express no opinions regarding the federal or state income tax consequences with respect to the Private Boatslip Privilege Fee. All Persons acquire their Private Boatslip Privileges subject to all applicable tax laws as they may exist from time to time. Certain provisions of the Internal Revenue Code impute interest income to a lender with respect to a non-interest bearing loan. These provisions may or may not currently apply to the Private Boatslip Privilege Fee. Regardless of the current situation, however, the Internal Revenue Service may in the future issue regulations which impute interest income to the Private Boatslip Privilege Fee. Prospective Users should consult with their own tax advisor with respect to the tax consequences with respect to the Private Boatslip Privilege Fee.

3.2. Amendment. The Board shall have the right, in its sole and absolute discretion, to amend these Policies at any time and in any manner which it deems appropriate, except that all amendments shall be subject to the prior written approval of the Declarant and no material amendment to Sections 1.3, 2.5(d), 2.5(f), 2.6 or the next to last sentence of Section 2.5(e) shall be effective unless approved by a majority of the Users affected by the proposed amendment. Any such amendment shall become effective when notice thereof is delivered to the Users.

3.3. PRIVATE BOATSLIP PRIVILEGES FOR RECREATIONAL PURPOSES ONLY. PRIVATE BOATSLIP PRIVILEGES ARE BEING OFFERED EXCLUSIVELY FOR THE PURPOSE OF PERMITTING PERSONS ACQUIRING SUCH PRIVATE BOATSLIP PRIVILEGES TO OBTAIN RECREATIONAL USE OF A MARINA BOATSLIP AND THE MARINA. PRIVATE BOATSLIP PRIVILEGES SHOULD NOT BE VIEWED OR ACQUIRED AS AN INVESTMENT, AND PERSONS PURCHASING A PRIVATE BOATSLIP PRIVILEGE SHOULD NOT EXPECT TO DERIVE ANY ECONOMIC PROFITS FROM THE PRIVATE BOATSLIP PRIVILEGE. NO FEDERAL OR STATE AUTHORITY HAS PASSED UPON OR ENDORSED THE MERITS OF THIS DOCUMENT.

3.4. ASSOCIATION'S LICENSE FOR MARINA. THE ASSOCIATION OPERATES THE MARINA BOATSLIPS AND THE MARINA UNDER A SHORELINE USE PERMIT / LICENSE ISSUED TO THE ASSOCIATION BY THE U.S. ARMY CORPS OF ENGINEERS, WHICH LICENSE CURRENTLY EXPIRES ON APRIL 1, 2002. THUS, PERSONS WHO ACQUIRE A PRIVATE BOATSLIP PRIVILEGE ACQUIRE ONLY A RIGHT TO USE SUCH BOATSLIP SUBJECT TO THESE POLICIES AND SUCH

LICENSE ISSUED BY THE U.S. ARMY CORPS OF ENGINEERS. PERSONS WHO ACQUIRE PRIVATE BOATSLIP PRIVILEGES SHALL NOT ACQUIRE ANY, AND SHALL NOT HAVE ANY, OWNERSHIP OR PROPRIETARY INTEREST, BENEFICIAL INTEREST, OR ANY OTHER VESTED INTEREST WHATSOEVER IN THE MARINA, THE MARINA BOATSLIPS, AND/OR THE FACILITIES OF THE MARINA.

THE ASSOCIATION INTENDS TO REQUEST RENEWAL OF SUCH LICENSE FOR SUCCESSIVE FIVE (5) YEAR TERMS. THE ASSOCIATION EXPECTS, BUT DOES NOT GUARANTEE, THAT THE LICENSE WILL BE RENEWED UPON REQUEST.

**IF THE ASSOCIATION'S LICENSE IS NOT RENEWED OR IS OTHERWISE TERMINATED OR IF THE RIGHT TO OPERATE THE MARINA BOATSLIPS AND THE MARINA IS TERMINATED, NO REFUNDS OF ANY KIND WILL BE GIVEN.**

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