# EXECUTIVE SUMMARY

| | |
|---|---|
| **SUBJECT/LOCATION:** | Chimney Hill Subdivision<br>22 remaining single-family lots<br>27 remaining townhouse lots<br>Northeast Corner of Six Flags Drive and Factory Shoals Road, Cobb County, Georgia 30168 |
| **DESCRIPTION:** | The subdivision has been developed to 43 single-family lots and 60 townhouse lots. The subdivision has no recreational amenities. W & H Communities was the developer and Red Oak Construction, a related entity, is the builder. |
| **ZONING:** | RA-5, Cluster Residential, Cobb County |
| **DATE OF VALUE:** | February 21, 2011 |
| **TAX IDENTIFICATION:** | Portion of 18-0512-008 |
| **INTEREST APPRAISED:** | Fee Simple |
| **FLOOD ZONE:** | According to the National Flood Insurance Rate Map No. 13067C0214G, dated December 16, 2008er 27, 1991, no portion of the subject lots lie within a designated flood hazard. |
| **HIGHEST AND BEST USE:** | Speculative holding for single-family and townhouse construction |

## IDENTIFICATION OF PROPERTY

The property which has been appraised and reported herein is:

**Chimney Hill Subdivision**
**Northeast Corner of Six Flags Drive and Factory Shoals Road**
**Cobb County, Georgia 30168**

The property appraised is 22 remaining single-family lots and 27 remaining townhouse lots in the Chimney Hill subdivision on the northeast corner of Six Flags Drive and Factory Shoals Road, just north of Interstate 20 (I-20), in Cobb County, Georgia. It is approximately one mile northwest of the I-20/Six flags Drive intersection and approximately twelve miles west of the Atlanta central business district. The adjoining is an aerial photograph of the subject property. Copies of subdivision plats are contained in the *Addendum*.

W & H Communities was the developer and Red Oak Construction, a related entity, is the builder.

A legal description was not provided. The property is referenced for tax purposes as a portion of Parcel 18-0512-008, in Land Lot 512 of the 18th District, 2nd Section of Cobb County. The lots appraised herein are Lots 4 to 10, 19, 20, 22 to 27, 29 to 34 and 43 in the single family portion and Lots 19 to 29, 33 to 43 and 47 to 51 in the townhouse section. The townhouse portion of the subdivision, accessed from Six Flags Drive, is gated. The single-family portion of the subdivision, accessed from Factory Shoals Road, is not gated. Marketing began in late 2007 and 21 houses and 31 townhouses have been built to-date.

COBB COUNTY DEVELOPMENT CERTIFICATION

REVISION NOTE:

N/A

OWNER/DEVELOPER:
W & H COMMUNITIES, LLC
701 WHITLOCK AVE. SUITE K-46
MARIETTA, GA 30064
770-424-1919

ZONING NOTES:

ROADWAY DEDICATION TABLE

| STREET NAME | TYPE | LENGTH (L.F.) |
|---|---|---|
| TANNEYHILL TRAIL | PUBLIC | 695.05 |
| SOUTHFACE WAY | PUBLIC | 933.03 |
| WINGSFIELD COURT | PUBLIC | 410.03 |

SITE LOCATION MAP
1"=2000'

CALL BEFORE YOU DIG
1-800-282-7411
"IT'S THE LAW"

TANNEYHILL TRAIL

FACTORY SHOALS ROAD (R/W VARIES)

SOUTHFACE WAY (60' R/W)

WINGSFIELD COURT (60' R/W)

STORMWATER MANAGEMENT FACILITY

NO DEED FOUND ZONED R-20

ZONED R-20

CONTINUED ON SHEET 2

HORIZONTAL SCALE 1"=50'

REVISION RECORD

| DATE | DESCRIPTION |
|---|---|
| 4-20-07 | ADDRESS COMMENTS |
| 4-25-07 | REMOVE DRAINAGE CONT |
| 5-29-07 | ADD DRAINAGE CONT |
| 6-5-07 | ADD SIGNATURE BLOCK |

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SUBDIVISION & COMMERCIAL SITE DESIGN
1111 SOUTH MARIETTA PARKWAY, SUITE A
MARIETTA, GEORGIA 30060
(678) 483-0242

GEORGIA REGISTERED LAND SURVEYOR
DATE: 06-05-07

FINAL PLAT

CLIENT: W & H COMMUNITIES, LLC
701 WHITLOCK AVE.
MARIETTA, GA 30064
770-424-1919
CONTACT: MARK HARPER

PROJECT: CHIMNEY HILL SUBDIVISION
LOCATED IN LAND LOT (S) 511, 512 & 569
19TH DISTRICT, 2ND SECTION
COBB COUNTY, GA

DRAWN BY
CHECKED BY
SCALE 1" = 50'
DATE FEBRUARY 28, 2007
FILE NUMBER 05170REV_BLDGS.PRO
SHEET NUMBER 1 OF 2
JOB NUMBER 05170

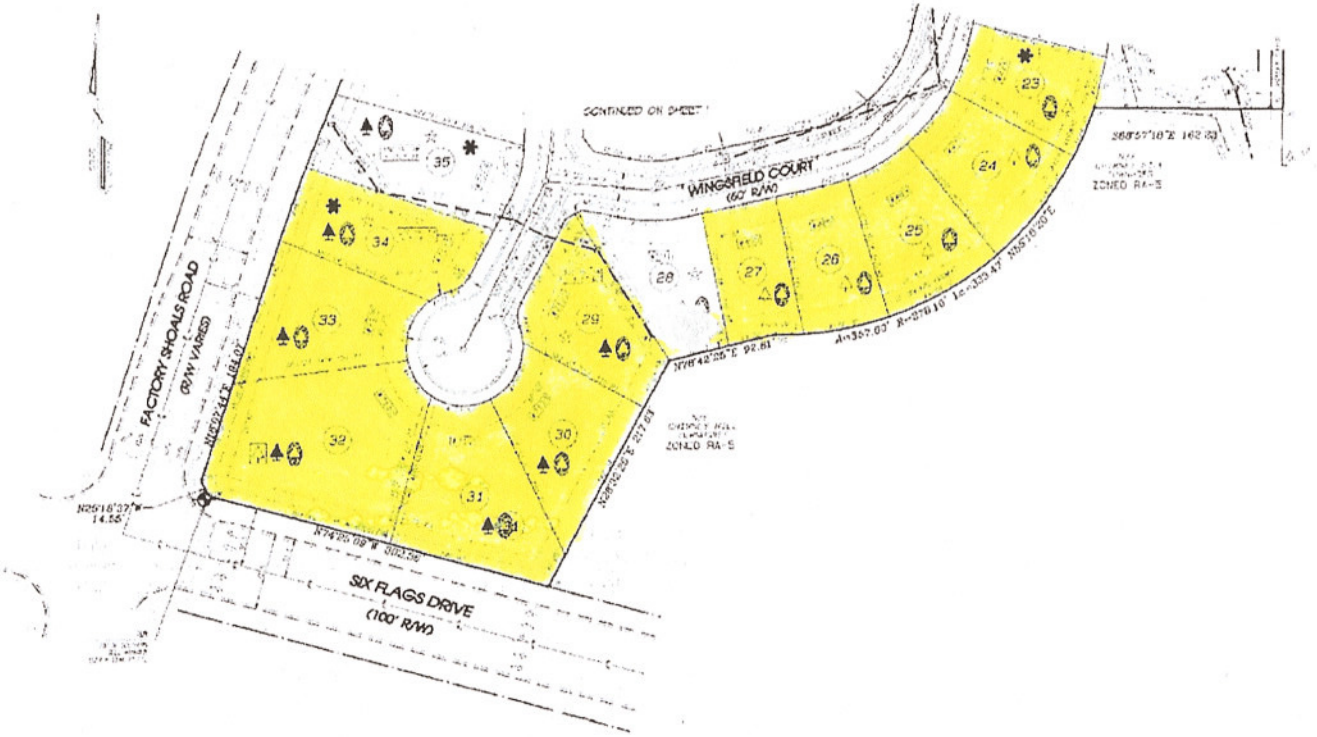
OWNER/DEVELOPER:
W & H COMMUNITIES, LLC
701 WHITLOCK AVE. SUITE K-46
MARIETTA, GA 30064
770-424-1819

## CENTERLINE CURVILINEAR DATA

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| C1 | 165.00' | S 41°59'53" W | 166.02' | 165.00' | 144.16' | 77.19' | 144.16' | 51°00'00" |
| C2 | 165.00' | S 41°59'53" W | 166.02' | 165.00' | 144.16' | 77.19' | 144.16' | 51°00'00" |
| C3 | 165.00' | S 41°59'53" W | 166.02' | 165.00' | 144.16' | 77.19' | 144.16' | 51°00'00" |
| C4 | 165.00' | S 41°59'53" W | 166.02' | 165.00' | 144.16' | 77.19' | 144.16' | 51°00'00" |
| C5 | 165.00' | S 41°59'53" W | 166.02' | 165.00' | 144.16' | 77.19' | 144.16' | 51°00'00" |
| C6 | 165.00' | S 41°59'53" W | 166.02' | 165.00' | 144.16' | 77.19' | 144.16' | 51°00'00" |
| C7 | 165.00' | S 41°59'53" W | 166.02' | 165.00' | 144.16' | 77.19' | 144.16' | 51°00'00" |
| C8 | 165.00' | S 41°59'53" W | 166.02' | 165.00' | 144.16' | 77.19' | 144.16' | 51°00'00" |
| C9 | 165.00' | S 41°59'53" W | 166.02' | 165.00' | 144.16' | 77.19' | 144.16' | 51°00'00" |
| C10 | 165.00' | S 41°59'53" W | 166.02' | 165.00' | 144.16' | 77.19' | 144.16' | 51°00'00" |

## LOT AREAS

| LOT | AREA (S.F.) |
|---|---|
| 1 | 8695 |
| 2 | 8652 |
| 3 | 8609 |
| 4 | 7869 |
| 5 | 8063 |
| 6 | 12,923 |
| 7 | 10,870 |
| 8 | 9,333 |
| 9 | 10,571 |
| 10 | 9,104 |
| 11 | 9,067 |
| 12 | 8,374 |
| 13 | 8,265 |
| 14 | 8,155 |
| 15 | 8,046 |
| 16 | 10,050 |
| 17 | 9,937 |
| 18 | 9,823 |
| 19 | 9,710 |
| 20 | 9,596 |
| 21 | 9,483 |
| 22 | 9,369 |
| 23 | 9,256 |
| 24 | 9,142 |
| 25 | 9,029 |
| 26 | 8,915 |
| 27 | 8,802 |
| 28 | 8,688 |
| 29 | 11,615 |
| 30 | 11,615 |
| 31 | 11,615 |
| 32 | 11,615 |
| 33 | 11,615 |
| 34 | 11,615 |
| 35 | 11,615 |




Filed in Office 6/1/07
Plat Book 261 pg 88
Jay C Stephenson, Clerk

## FINAL PLAT NOTES

## SURVEY NOTES

## REVISION NOTE:

HORIZONTAL SCALE 1" = 50'

REVISION RECORD

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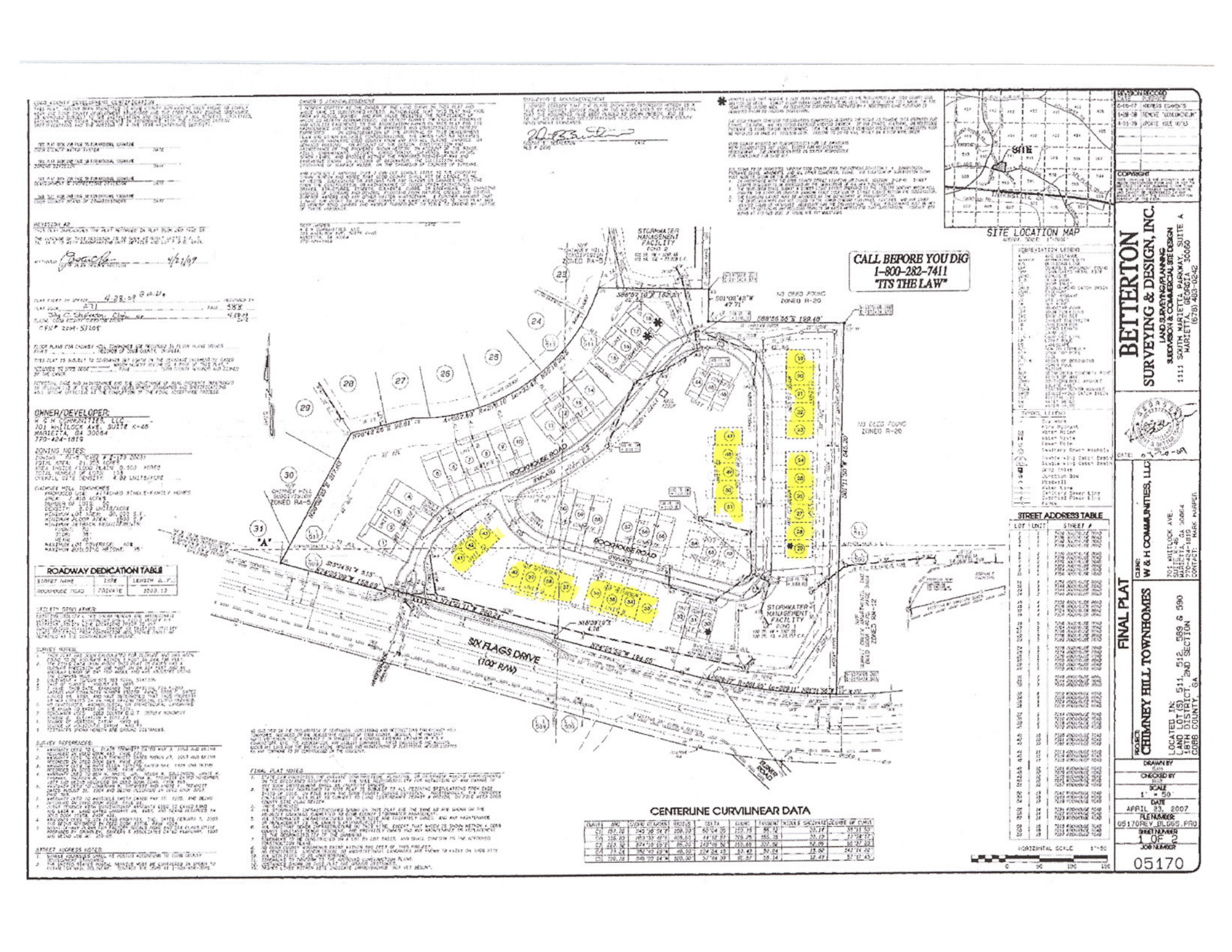
MARIETTA, GEORGIA 30060
(678) 483-0242


FINAL PLAT

PROJECT:
CHIMNEY HILL SUBDIVISION
LOCATED IN
LAND LOT(S) 511, 512 & 589
18TH DISTRICT, 2ND SECTION
COBB COUNTY, GA

CLIENT:
W & H COMMUNITIES, LLC
701 WHITLOCK AVE.
SUITE K-46
MARIETTA, GA 30064
770-424-1819

DRAWN BY
CHECKED BY
SCALE
1" = 50'
DATE
FEBRUARY 28, 2007
FILE NUMBER:
05170RCV_BLC3S.PRO
SHEET NUMBER:
2 OF 2
JOB NUMBER
05170




| CURVE | ARC | CHORD BEARING | RADIUS | DELTA | CHORD | TANGENT | NOTES | DEGREE OF CURVE |
|---|---|---|---|---|---|---|---|---|
| C1 | 157.78 | S45°36'34.1"E | 209.00 | 43°15'19" | 154.09 | 82.74 | | 27°23'57" |
| C2 | 118.03 | S83°33'45"E | 605.00 | 11°10'57" | 117.84 | 59.23 | | 9°28'27" |
| C3 | 223.36 | S74°10'03"E | 85.00 | 150°32'32" | 165.66 | 322.36 | | 67°37'03" |
| C4 | 77.24 | S82°05'19"W | 48.00 | 92°14'13" | 69.13 | 50.04 | | 119°24'02" |
| C5 | 170.78 | S45°22'04"W | 100.00 | 97°49'39" | 150.97 | 112.74 | | 57°17'45" |

CENTERLINE CURVILINEAR DATA

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LAND SURVEYING/PLANNING
SUBDIVISION & COMMERCIAL SITE DESIGN
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MARIETTA, GEORGIA 30060
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REVISION RECORD
DATE | REVISED COMMENTS
4-09-07 | REVISE "LOCKBOX"
4-23-07 | UPDATE RISE NOTES

COPYRIGHT

DATE: 4-24-07

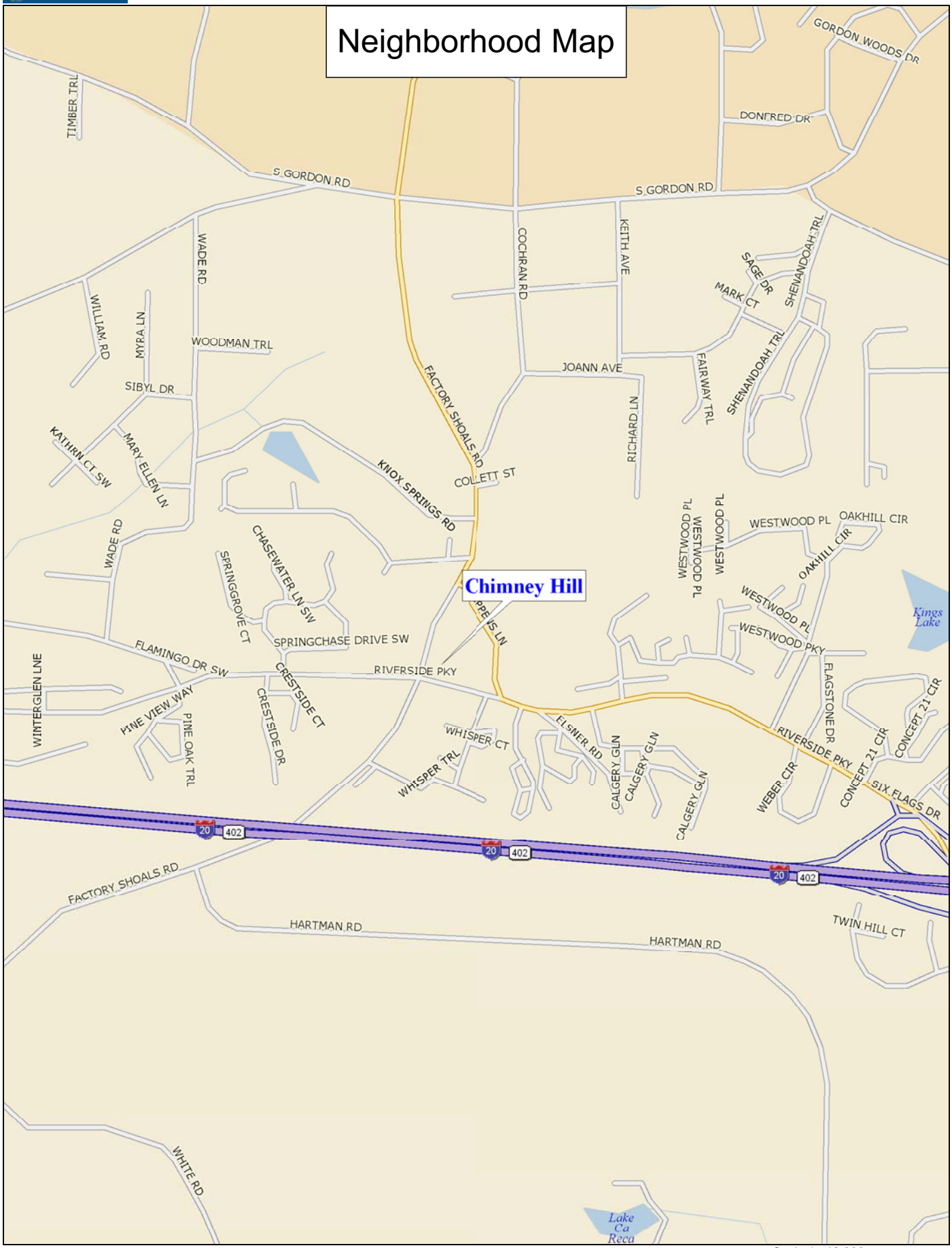
FINAL PLAT

OWNER: W & H COMMUNITIES, LLC
701 WHITLOCK AVE.
MARIETTA, GA 30064
770-424-1819
CONTACT: MARK HARPER

PROJECT: CHIMNEY HILL TOWNHOMES
LOCATED IN: LAND LOT(S) 511, 512, 589 & 590
18TH DISTRICT, 2ND SECTION
COBB COUNTY, GA

DRAWN BY
CHECKED BY
SCALE: 1" = 50'
DATE: APRIL 23, 2007
FILE NUMBER: 05170REV DLGGS.PRO
SHEET NUMBER: 1 OF 2
JOB NUMBER: 05170

# Neighborhood Map

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www.delorme.com

TN
MN (4.4°W)

Scale 1 : 12,800
0 200 400 600 800 1000 ft
0 100 200 300 400 500 m
1" = 1,066.7 ft
Data Zoom 14-0

**Views of Typical Townhouse Lots**

**Existing Townhouses in Chimney Hill**

**Views of Typical Single-Family Lots**

**Existing Single-Family Houses in Chimney Hill**

**Single-Family and Townhouse Entrances**

**Views of Six Flags Drive**

**Views of Factory Shoals Road**

Deed Book 14496 Pg 3221
Filed and Recorded Jun-04-2007 03:49pm
2007-0088033

Jay C. Stephenson
Clerk of Superior Court Cobb Cty. Ga.

22

Top portion for recording purposes

After Recording Return to:
MOORE INGRAM JOHNSON & STEELE, LLP
Attn: Susan S. Stuart
192 Anderson Street
Marietta, Georgia 30060

# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CHIMNEY HILL SUBDIVISION

**STATE OF GEORGIA**
**COUNTY OF COBB**

**THIS DECLARATION,** made this 31st day of May ,2007, by W & H COMMUNITIES, LLC (hereinafter referred to as "Declarant") and RED OAK CONSTRUCTION, LLC (hereinafter referred to as "Other Owner").

## WITNESSETH

**WHEREAS,** Declarant and Other Owner are the owners of all those certain lots, tracts or parcels of land situated, lying and being in Land Lots 511, 512 & 589 of the 18th District, 2nd Section, Cobb County, Georgia, and being more fully delineated by a plat prepared by Betterton Surveying & Design, Inc., Robert E. Betterton, Georgia Registered Land Surveyor Number 2496, dated April 25, 2007 and recorded May 1, 2007 in Plat Book 260, Page 51, Records of Cobb County, Georgia (the "Property"); and

**WHEREAS,** Declarant and Other Owner desire to provide for the preservation and enhancement of the property values in Chimney Hill Subdivision, and for the maintenance of property and improvements thereon, and to this end desires to subject the property to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which are for the benefit of the Property; and

**WHEREAS,** Declarant has deemed it desirable, for the efficient preservation of the values in Chimney Hill Subdivision, to create an agency to which should be delegated and assigned the powers of owning, maintaining and administering the common area and

improvements thereon and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

**WHEREAS,** Declarant will cause to be incorporated under the laws of the State of Georgia the Chimney Hill HOA, Inc., a non-profit corporation, for the purpose of exercising the aforesaid functions.

**NOW, THEREFORE,** Declarant and Other Owner declare that the real property described above is and shall be held, transferred, sold, mortgaged, conveyed, leased, occupied and used subject to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth.

## ARTICLE I
## DEFINITIONS

Section 1. "Additional Property" means the additional property which may be added to the Property and made subject to this Declaration pursuant to Article IX hereof. A description of the Additional Property is set forth on Exhibit "A" attached hereto and made a part hereof.

Section 2. "Architectural Control Committee" shall mean and refer to W & H Communities, LLC, or such other entity or individual as it may appoint, until all Lots in Chimney Hill Subdivision has been fully developed and permanent improvements constructed thereon and sold to permanent residents. At such time as all Lots are fully developed and permanent improvements constructed thereon and sold to permanent residents, the then current Declarant shall relinquish its right to appoint the Architectural Control Committee and said Committee shall be appointed by the Board.

Section 3. "Association" shall mean and refer to Chimney Hill HOA, Inc., its successors and assigns.

Section 4. "Board" shall mean and refer to the Board of Directors of the Association.

Section 5. "Common Area" shall mean all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners.

Section 6. "Common Expenses" shall mean and refer to the actual and estimated expenses of operating the Association, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to the Declaration and the By-laws and Articles of Incorporation of the Association.

Section 7. "Declaration" shall mean the covenants, conditions, restrictions and easements and all other provisions herein set forth in this entire document, as may from time to time be amended.

Section 8. "Declarant" shall mean and refer to W & H Communities, LLC, or any successor in title or any successor in interest to W & H Communities, LLC, to all or any portion

of the Property then subject to this Declaration, provided in the instrument of conveyance to any such successor in title or interest it is stated that the rights of Declarant are conveyed therewith or if in any subsequent recorded instrument the then current Declarant conveys Declarant's rights to such successor-in-title.

Section 9. "Lot" shall mean and refer to residential lots as shown on the recorded subdivision plat of the Property, as well as any future lots subject to the within covenants, conditions, restrictions and easements by the Declarant in Chimney Hill Subdivision or any expansion thereof by Declarant.

Section 10. "Owner" shall mean and refer to the record owner, whether one or more persons, of the fee simple title to any lot which is part of the Property, but excluding those having such interest merely as security for the performance of an obligation.

Section 11. "Person" shall mean and refer to a natural person, corporation, partnership, association, trust or other legal entity, or any combination thereof.

Section 12. "Property" shall mean and refer to that certain real property described on the plat hereinabove referenced.

Section 13. "Structure" shall mean and refer to:

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

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

(c) any change in grade at any point on a Lot of more than six (6) inches, whether or not subsection (b) of this Section 13 applies to such change.

## ARTICLE II
## ARCHITECTURAL CONTROL COMMITTEE

Section 1. Purpose, Powers and Duties of the Architectural Control Committee.

(a) The purpose of the Architectural Control Committee is to assure that the installation, construction, or alteration of any Structure on any Lot is in accordance with the standards determined by the Architectural Control Committee. To the extent necessary to carry out such purpose, the Architectural Control Committee shall have all of the powers and duties to do each and every thing necessary, suitable, convenient or proper for, or in connection with or incidental to, the accomplishment of such purpose, including, without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any structure on any Lot.

(b) To preserve the architectural appearance of the neighborhood, no construction or placement of improvements of any nature whatsoever shall be commenced or maintained by any owner, his family, tenants, visitors, guests, servants, and agents with respect to the exterior of any house or with respect to any other portion of any lot or other parcel of land, including without limitation, the construction or installation of sidewalks, driveways, decks, patios, swimming pools, tennis courts, greenhouses, playhouses, garages, guest or servants' quarters, or other outbuildings, nor shall any exterior addition to or change or alteration therein be made, unless and until the plans and specifications showing the nature, color, type, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to the harmony of external design, location, and appearance in relation to surrounding structures and topography by the Architectural Control Committee. The Architectural Control Committee shall have the sole discretion to determine whether the plans and specifications submitted for approval are acceptable and in compliance with the total scheme of the neighborhood. If same are not approved or disapproved within thirty (30) days from date submitted, then same shall be approved by default.

## ARTICLE III
## MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner of a Lot which is subject to this Declaration shall be a mandatory member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to this Declaration and shall pass automatically to an Owner's successor-in-title to the Lot.

Section 2. Voting Rights. The Association shall have two classes of voting membership:

Class A: Every person who is an Owner, with the exception of the Declarant, shall be a Class A member and shall be entitled to one vote for each Lot owned. When more than one Person is a Class A member by virtue of an ownership interest in the same Lot, the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. In the event of disagreement among such persons and in an attempt by two or more of them to cast the vote of such Lot, such persons shall not be recognized and the vote of such Lot shall not be counted. The membership of Class A members shall automatically terminate upon the member's sale of his Lot. However, no termination of Class A membership shall affect such member's obligation to pay assessments, as hereinafter provided for, due and payable for any period prior to the date of such termination, and there will be no refund for assessments paid for periods falling after the date of such termination.

Class B: The Class B member(s) shall be the Declarant and Declarant shall be entitled to three (3) votes for each Lot owned by Declarant or by a builder who holds a Lot for resale. A builder who holds Lots for resale shall not have voting rights as Declarant shall control such votes. At such time as any portion of the Additional Property is added to this Declaration, the Class B member votes shall increase according to the number of Lots included therein. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) The date on which seventy five percent (75%) of the Lots located on the Property and any Property which has been added to this Declaration by Declarant have been sold to individuals who reside in dwellings located on said Lots. In the event the Class B membership has ceased pursuant to this provision, and the Declarant adds Additional Property which causes the number of Lots sold to individuals who reside in dwellings located on said Lots to be less than seventy five percent (75%) of the Lots located on the Property, and any Additional Property which has been added to the Declaration, then the Class B membership shall be revived, and the Class B member shall again have three (3) votes for each Lot owned.

(b) 7 years from the date of this Declaration.

(c) the surrender by Declarant of the authority to appoint and remove members of the Board of the Association by written instrument executed and recorded by Declarant; provided, however, that so long as any mortgagee of Declarant holds a security interest in any portion of the Property as security for a development loan to Declarant, the Class B member membership shall not terminate without the prior written consent

of such mortgagee. If at the time of termination of the Class B membership Declarant still owns any Lots, then as to each Lot owned by Declarant, Declarant shall be deemed to be a Class A member.

ARTICLE IV
PROPERTY RIGHTS

Section 1. Member's Easement of Enjoyment. Subject to the provisions herein, every member of the Association shall have a right and easement of use and enjoyment in and to the Common Area [including, without limitation, the right of pedestrian (but not vehicular) access, ingress and egress to and from his Lot over those portions of the Common Area from time to time designated for such purposes], which right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following:

(a) the right of the Association to charge a reasonable admission and other fees for the use of any recreational facility which may in the future be situated upon the Common Area.

(b) the right of the Association to suspend the voting rights and right to use of the Common Area by an Owner or his designee for any period during which any assessment against his Lot remains unpaid, and for a period of not to exceed sixty (60) days for any infraction of its published rules and regulations.

(c) the right of the Association to borrow money for the purpose of improving the Common Area or any portion thereof, or constructing, repairing or improving any facilities located or to be located thereon, and, upon the assent of two-thirds of the Class A members and the Class B member, if any, to give as security a mortgage conveying all or any portion of the Common area.

(d) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members, agreeing to such dedication or transfer, has been recorded.

(e) the easements reserved in Article VII of this Declaration.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-laws, his right or use and enjoyment in and to the Common Area and the improvements thereon to the members of his family, his tenants, guests and invitees, subject to such regulations and fees as may be established from time to time by the Association.

Section 3. No Partition. There shall be no judicial partition of the Property or any part thereof, nor shall any Person acquiring any interest in the Property or any part thereof seek any

such judicial partition unless the Property has been removed from the provisions of this Declaration.

## ARTICLE V
## COVENANT FOR MAINTENANCE AND CAPITAL IMPROVEMENT ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of a Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments, (2) special assessments for capital improvements, (3) specific assessments; and (4) initiation fees, such assessments to be established and collected as hereinafter provided. The annual, specific and special assessments and initiation fees, together with interest thereon and costs of collection thereof, as hereinafter provided, including reasonable attorney's fees, shall be a charge and a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest thereon and costs of collection thereof, including reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for promoting the health, safety, pleasure and welfare of the Owners of the Lots and the costs and expenses incident to the operation of the Association, including without limitation the maintenance and repair of the Common Area and improvements thereon, the maintenance of services furnished by the Association, the purchase of insurance by the Association, the repair and replacement of improvements on the Common Area, payment of all taxes, insurance premiums and all costs and expenses incidental to the operation and administration of the Association, and establishment and maintenance of a reasonable reserve fund or funds.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Two Hundred, Fifty Dollars ($250.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above five percent (5%) by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for any Action Authorized under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly or annual basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to each Lot on the date that such Lot is conveyed to an Owner. Anything contained herein to the contrary notwithstanding, Declarant and any builder shall not be responsible for assessments on Lots not containing an occupied residence. Declarant shall, however, fund any deficit which may exist between assessments and the annual budget or pay the annual assessment and any special assessments due for as long as there is a Class B member of the Association. Declarant's obligation hereunder shall constitute a lien against all real property owned by Declarant and subject to this Declaration. The due dates shall be established by the Declarant until there is no longer a Class B member and then by the Board. The Association shall, upon demand, and for a reasonable charge, not to exceed Ten Dollars ($10.00), 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 specified Lot is binding upon the Association as of the date of its issuance. If the Association fails to respond to any such request within ten (10) days after receipt of such request, any lien then outstanding shall be deemed to have been extinguished. All such requests shall be sent to the Association in the same manner as provided for notices in Section 6 hereof.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid

within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum. In such case, the Association may accelerate, at its option, the entire unpaid balance of the assessment and may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against such Owner's Lot, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. Each such Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association, or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of liens against real property. The lien provided for in this Section 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 purchase any lot at any sale and convey the same for the purpose of protecting its lien. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area, abandonment of his Lot or by renunciation of membership in the Association. An Owner may give to the Association, nevertheless, subject to acceptance thereof by the Association, a deed in lieu of action on lien.

Section 9. Subordination of Lien to First Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage, first purchase money security deed or security deed representing a first lien on said property. Sale of transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein: (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (b) all Common Area; and (c) all properties exempted from taxation by state or local governments upon the terms and to the extent of such legal exemption. Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens except as otherwise set forth herein.

Section 11. Effect of Delinquency on Class A Members. Notwithstanding all of the foregoing rights of the Association, the Association shall have the further right to prohibit a delinquent Class A member, such delinquency being as herein defined, from using in any manner the Common Area.

Section 12. Initiation Fee. There shall be owed to the Association a nonrefundable initiation fee at each closing of a Lot. The initiation fee shall be Two Hundred Fifty Dollars ($250.00) per Lot for all Lots. Each Owner understands that the initiation fee as set forth herein shall be paid to the Association at the initial closing of the Lot and at each subsequent closing of that Lot so that the Association receives an initiation fee each time a Lot is sold.

Section 13. Specific Assessments. The Board shall have the power to levy specific assessments 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 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 this Declaration and the costs of maintenance performed by the Association for which the Owner is responsible shall be specific assessments. The Board of Directors may also specifically assess Owners for Association expenses as follows: (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; and (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.

## ARTICLE VI
## MAINTENANCE

Section 1. Association's Responsibility. Except as otherwise provided for herein, the Association shall maintain and keep in good repair all portions of the Common Area. The Association's responsibility with respect to the Common Area shall be deemed to include, but shall not be limited to, the maintenance, repair and replacement of (i) all monuments and signage, if any, and buildings and other improvements, if any, situated within the Common Area, (ii) such utility lines, pipes, plumbing, wires, conduits and systems which are a part of the Common Area, and (iii) all lawns, trees, shrubs, hedges, grass, conservation easement areas, buffers, other landscaping and all detention ponds situated within or upon the Common Area.

From the time that the Common Elements or any portion thereof, is opened and put into use for the enjoyment of Owners, Declarant shall be and remain wholly free and clear of any and all liability to, or claims by, all Owners, and all persons and entities, of whatever kind or character, whether sounding in contract or tort, deriving from the occurrence of any injury or damage to any person or property on, or in respect of the use and operation of, the Common Elements or any of its improvements, fixtures and facilities; inasmuch as the control, operation, management, use and enjoyment, of the Common Elements shall be within, under and subject to the Association and not Declarant. In this respect, its shall be the affirmative duty and responsibility of each Owner and user of any facilities located on the Common Elements to continuously inspect the same for any defects or perils or other unsafe conditions or circumstances, prior to and thereof; and all users of, and visitors to, the Common Elements and its improvements and facilities shall use, enjoy and visit, the same at their own risk and peril.

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 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. The Community Wide Standard as used in this subparagraph shall mean and refer to the standard of conduct,

maintenance or other activity generally prevailing in Chimney Hill Subdivision. Such standard may be more specifically determined by the Board of Directors of the Association but must be consistent with the Community-Wide Standard originally established by the Declarant. In the event that the Board of Directors of the Association determines that 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, the Association shall, except in 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. The Owner shall have ten (10) days after receipt of such notice 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, 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. The remedies provided in the Section shall be in addition to, and not in lieu of, other remedies provided in this Declaration for a violation of the Declaration.

## ARTICLE VII
## EASEMENTS

Section 1. Utility Easements. There is hereby created in favor of the Association an easement upon, across, over, through and under all of the Common Area for ingress, egress, installation, replacement, repair and maintenance of all utility and service lines and systems, including but not limited to water, sewers, gas, telephones, electricity, television cable or communication lines and systems. An easement is further granted to the Association, its officers, agents, employees and any management company retained by the Association, to enter in or to cross over the Common Area and the Lots, to inspect and to perform the duties of maintenance and repair of the Common Area and the Lots, as provided herein. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines or other utilities may be installed or relocated on the property except as initially programmed and approved by the Declarant or thereafter approved by Declarant or the Board. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by a separate recordable document, Declarant or the Association shall have the right to grant such easement on the Common Area without conflicting with the terms hereof.

Section 2. Easement for Declarant. Declarant hereby reserves for itself, its successors and assigns, the following easements and rights-of-way in, on, over, under and through any part of the Property owned by Declarant and the Common Area for so long as Declarant owns any Lot primarily for the purpose of sale:

(a) For the erection, installation, construction and maintenance of wires, lines and conduits, and necessary to proper attachments in connection with the transmission of

electricity, gas, water, telephone, community antennae, television cables and other utilities;

(b) For the construction of improvements on the Lots;

(c) For the installation, construction and maintenance of storm-water drains, public and private sewers, and for any other public or quasi-public utility facility;

(d) For the use of the Common Area and any sales office, model units and parking spaces in connection with its efforts to market Lots;

(e) For the maintenance of such other facilities and equipment as in the sole discretion of Declarant may be reasonably required, convenient or incidental to the completion, improvement and sale of Lots.

Section 3. Easements for Association. There shall be a general right and easement for the benefit of the Association, its directors, officers, agents and employees, including any management company retained by the Association, to enter upon the Common Area and the Lots to perform their respective duties.

## ARTICLE VIII
## GENERAL COVENANTS AND RESTRICTIONS

The following covenants and restrictions shall apply to all Lots and to all Structures erected or placed thereon:

Section 1. Residential Use. All Lots shall be restricted exclusively to single-family residential use. The use of a portion of a dwelling as an office by an Owner shall not be considered to be a violation of this covenant if such use does not create regular customer, client or employee traffic. The use of a dwelling or a portion thereof for business meetings, entertainment, or the enjoyment or business of the Owner's employees, trustees, agents, clients, or customers shall not be considered to be a violation of this covenant if such use does not create regular customer, client or employee traffic. Nothing herein shall be construed to prohibit or prevent Declarant or any builder of residences on the Property from using any Lot owned by Declarant or such builder for the purpose of carrying on business related to the development and sale of Lots and/or new homes on Lots.

Section 2. Common Area. The Common Area shall be used by the Owners and their agents, servants, tenants, family members, invitees and licensees for such other purposes as may be authorized by the Association.

Section 3. Debris. No rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of an Owner's Lot so as to render the same unsanitary, unsightly or offensive. No nuisance shall be permitted to exist upon any portion of the Property.

Section 4. Erosion Control. No activity which may create erosion or siltation problems shall be undertaken on any Lot except for the initial construction of residences and development of the Property.

Section 5. Signs.

(a) No signs whatsoever shall be installed, altered or maintained on any Lot, or on any portion of a Structure visible from the exterior thereof, except:

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

(ii) not more than one "For Sale" or "For Rent" sign, provided, however, that in no event shall any such sign be larger than six (6) square feet in area; and

(iii) directional signs for vehicular or pedestrian safety;

(iv) entry signs used to identify subdivision, marketing signs used to advertise subdivision by Declarant and in conjunction therewith brochure holders.

(b) Following the consummation of the sale of any Lot, the sign located thereon shall be removed immediately.

Section 6. Fences. No chain link or cyclone fences may be placed on the Property. No fences shall be erected further forward toward the street on which a residence fronts than the rear-most portion of said residence. All fences must be approved by the Architectural Control Committee as set forth in Article II herein.

Section 7. Recreational Vehicles, Trailers, etc. No recreational vehicles, trailers, campers, trucks (except pickups and vans), travel buses or any such equipment shall be parked on any Lot. No inoperative vehicle shall be parked on any Lot for any period of time in excess of fourteen (14) days. No owners or occupants of any lot or parcel of land shall repair or restore any vehicle of any kind upon any lot or upon any parcel of land, except for emergency repairs, and then only to the extent necessary to enable the movement thereon to a proper repair facility.

Section 8. Recreational Equipment. No recreational and playground equipment shall be placed or installed on any Lot which is visible from the street abutting such Lot without prior written approval of the Architectural Control Committee.

Section 9. Accessory Structures. A detached accessory structure may be placed on a Lot to be used for a playhouse or tool shed. Such accessory structures shall not exceed ten (10) feet in height, shall conform in exterior design and quality to the dwelling on the same Lot, and shall be located only behind the dwelling as such dwelling fronts on the street abutting such Lot. Such accessory structures shall also be located with such side and rear setback lines as may be

required hereby or by applicable zoning law. There shall be no outside lighting except as may be approved by the Architectural Control Committee. Any accessory structure must be approved, in advance, in writing by the Architectural Control Committee.

Section 10. Improvement of Lots. All construction of dwellings, accessory structures and all other improvements in Chimney Hill Subdivision shall be undertaken and completed in accordance with the following conditions:

(a) All construction shall be carried out in compliance with the laws, code, rules, regulations and orders of all applicable governmental agencies and authorities.

(b) Concrete block or cinder block shall not be used as a building material for the exposed exterior surface of any dwelling or accessory structure constructed or placed on any Lot.

(c) Only one mailbox shall be located on any Lot, which mailbox shall be selected to be identical in quality and design of surrounding dwellings and mailboxes and shall be placed and maintained to complement the dwelling to which it is appurtenant to the extent such mailbox is permitted to be located and maintained by the United States Postal Service, its successors and assigns. Any deviation from the standard mailbox and supporting structure must be approved by the Architectural Control Committee.

(d) No lumber, bricks, stones, cinder blocks, scaffolding, mechanical devices, or any other materials or devices used for building purposes shall be stored on any Lot except for purposes of construction of a dwelling or accessory structure on such Lot nor shall any such building materials or devices be stored on any Lot for longer than the length of time reasonably necessary for the construction in which such materials or devices are to be used.

(e) No exposed above-ground tanks for the storage of fuel or water or any other substance shall be located on any Lot other than apparatus relating to solar energy, the location and design of which must first be approved by the Architectural Control Committee.

(f) Adequate off-street parking shall be provided for each Lot. Except for house guests staying two (2) weeks or less, no more than one car shall be parked in the driveway of a Lot.

(g) At no time shall any garage located on a Lot be converted to living space.

(h) All garages must have doors, and each garage door must be coordinated in design and color with the dwelling to which it is appurtenant. Both garages must be occupied by Owner's motor vehicles before a third vehicle is allowed to be parked in the driveway.

(i) Any construction on a Lot shall be at the risk of the Owner of such Lot and the Owner of such Lot shall be responsible for any damage to any curbing or street resulting from construction on such Lot; repairs of such damage must be made within thirty (30) days after completion of such construction.

(j) Any change in paint color to any structure must be approved by the Architectural Control Committee.

Section 11. Animals. No animals, including birds, insects and reptiles, may be kept on any Lot unless kept thereon solely as household pets and not for commercial purposes. No animal shall be allowed to become a nuisance. No animals shall be boarded outside of the dwelling structure.

Section 12. Accessory Structures Installed by Declarant. Entry signs, fences, walls and landscaping installed by Declarant on the Property shall be and are hereby dedicated to the use and benefit of all owners, and shall not be removed or altered without a two-third (2/3) vote of the Association Class A members.

Section 13. Miscellaneous Fixtures. To provide a neat, attractive and harmonious appearance throughout the neighborhood, no awnings, shades or window boxes shall be attached to, or hung or used on the exterior of, any window or door of any house; and no railings, fences, walls, antennae or satellite dishes shall be installed or constructed upon any lot or parcel of land without the prior written consent of the Architectural Control Committee. Further, no foil or other reflective material shall be used on any windows or sunscreens, blinds, shades or for any other purpose, nor shall any window mounted heating, air-conditioning or fan units be permitted. Outside clotheslines or other outside facilities for drying or airing clothes are specifically prohibited and shall not be erected, placed or maintained upon any lot or parcel of land, nor shall any clothing, rugs or other items be hung on any railing, fence, hedge or wall.

Section 14. Antennae. No television antenna, radio receiver, satellite dish or other similar device shall be attached to or installed on any portion of the Property, unless said antenna, radio receiver, satellite dish or other device is one meter or less in diameter and is installed at the rear of the residence, nor shall radio or television signals, nor any other form of electromagnetic radiation, be permitted to originate from any Lot which may unreasonably interfere with the reception of television or radio signals within the Subdivision; provided, however, that the Association shall not be prohibited from installing equipment necessary for master antenna, security, cable television, mobile radio or other similar systems within the Subdivision, and should cable television services be unavailable and adequate television reception not be otherwise available, then an Owner may make written application to the Architectural Control Committee for permission to install a television antenna. The location of the placement of a satellite dish that is one meter or less in diameter shall be subject to the approval, **in writing**, of the Architectural Control Committee except that said committee must allow a placement at a location on an Owner's Lot where reception can reasonably be obtained.

Section 15. Leasing. At no time shall more than 10% of the total number of Lots located on the Property be leased.

Deed Book 14496 Pg 3236

ARTICLE IX
ANNEXATION

Section 1. Submission of Additional Property. Declarant shall have the option and right from time to time, without the necessity of consent by the Association, the Board or the Owners, but subject to Section 2 of this Article, to submit all or portions of the Additional Property to this Declaration and thereby to cause the Additional Property, or such portions thereof, to become part of the Property. This option may be exercised by the Declarant in accordance with the conditions and limitations set out in Section 2 of this Article, which are the only conditions and limitations on such right.

Section 2. Conditions of Annexation. Any Annexation as permitted by Section 1 of this Article shall be in accordance with the following terms and conditions:

(a) The option to submit portions of the Annexation Property may be exercised at any time and from time to time until seven (7) years from the date this Declaration is recorded; provided, however, that the Owners of Lots to which two-thirds of the Class A votes in the Association appertain, exclusive of any vote or votes appurtenant to Lots then owned by Declarant, may consent to the extension of such option by vote taken not more than one (1) year prior to the date upon which such option will expire.

(b) The legal description of the Additional Property is set forth in Exhibit "B". Portions of the Additional Property may be added at different times, and there are no limitations fixing the boundaries of those portions or regulating the order in which any such portions may become part of the Property.

(c) All Lots created on portions of the Additional Property which are added to the Property will be restricted exclusively to residential use, in accordance with Article VI of this Declaration.

(d) The option reserved by Section 1 of this Article may be exercised by the Declarant or Successor Declarant alone (without the consent of the Association or any Owner) by the execution by the Declarant of an amendment to this Declaration which shall be filed for record in the Office of the Clerk of the Superior Court of Cobb County, Georgia, together with a plat of that portion of the Additional Property which is to become part of the Property by reason of such amendment. Such plat shall indicate the boundaries of that portion of the Additional Property which is to become part of the Property, the boundaries of all Lots to be located therein, and an identifying number for each such Lot. Any such amendment shall expressly submit that portion of the Additional Property which is to become part of the Property from time to time, and upon the exercise, if any, of such option, the provisions of this Declaration shall be understood

and construed as embracing all of the Property, including the initial phase and such portions of the Additional Property as have become part of the Property by annexation in this manner.

(e) In addition to the procedure outlined in sub-paragraph (d) above, the option reserved by Section 1 of this Article may be exercised with respect to any portions of the Additional Property, notwithstanding that such Additional Property may be owned by persons, including any individual, individuals, corporations, partnerships or any other type of entity, other than Declarant. Declarant shall exercise this option by an amendment to this Declaration which shall be filed for record in the Office of the Clerk of the Superior Court of Cobb County, Georgia, together with a plat of that portion of the Additional Property which is to become part of the Property by reason of such amendment. Such plat shall indicate the boundaries of that portion of the Additional Property which is to become part of the Property, the boundaries of all Lots to be located thereon, and an identifying number for each such Lot. Any such amendment shall contain a statement consenting to the annexation of any such Additional Property, together with a reference to a Declaration, (citing the specific Deed Book and Page in which such Declaration is recorded) executed by the owner or owners thereof submitting such Additional Property to this Declaration. Upon the exercise of the foregoing procedure, the provisions of this Declaration shall be understood and construed as embracing all of the Property, including the initial phase and such portions of the Additional Property as have become part of the Property by annexation in this manner.

(f) From and after the date of annexation of any portion of the Additional Property, each Lot so added to the Property and the Owners thereof, shall have the same vote, shall share the same obligations and responsibilities, and shall have the same rights and privileges accorded every other Lot previously comprising part of the Property. Upon annexation of each portion of the Property, as herein provided, the Association shall be deemed to have assumed, automatically, and without the necessity of consent by the Association, the Board or any individual Owners, the covenants to maintain the Common Property and the other obligations imposed by this Declaration, as amended from time to time, with respect to that portion of this Additional Property which is then the subject of annexation.

(g) It is understood that if Chimney Hill Subdivision is approved for funding of individual Lot loans by the Federal Housing Administration and/or the Veterans Administration, any variance from the plan of Annexation initially approved by them may jeopardize future funding unless such variance is approved prior to implementation.

(h) Each Owner, by acceptance of a deed to a Lot in the Property, and the Association, shall be deemed to have approved annexation in the manner provided in this Article IX.

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 Chimney Hill Subdivision then owned by Declarant or the Association from the coverage of this Declaration, to the extent originally included in error or as a result of any changes whatsoever in the plans for Chimney Hill Subdivision, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for Chimney Hill Subdivision.

## ARTICLE X
## GENERAL PROVISIONS

Section l. Enforcement.

(a) The Association, the Architectural Control Committee, the Declarant or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, easements, liens and charges nor or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

(b) The Architectural Control Committee shall have the right of abatement in all cases where an Owner of a Lot shall fail to take reasonable steps to remedy a violation or breach of any restriction contained in this Declaration within twenty (20) days after the mailing of written notice of such violation or breach. The right of abatement means the right of the Architectural Control Committee, through its agents and employees, to enter at all reasonable times upon any Lot or Structure as to which a violation or breach exists, and to take such action or actions specified in the notice to the Owner to abate, extinguish, remove or repair such violation or breach, all without being deemed to have committed a trespass or wrongful act by reason of such entry and such actions.

Section 2. Fines. The Board of Directors may impose fines or other sanctions, for violations of this Declaration, said fines to be collected as provided herein for the collection of assessments.

Section 3. The Board shall have the right to record in the appropriate land records a notice of violation of this Declaration, Bylaws or any rules, regulations, use restrictions, or design guidelines promulgated by the Association and to assess the cost of recording and removing such notice against the foregoing.

Section 4. Severability. If any provision of the Declaration, or any paragraph, subparagraph, article, section, sentence, clause, phrase, word or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Declaration and the application of any such provision, paragraph, subparagraph, article, section, sentence, clause, phrase or word

in any other circumstances shall not be affected thereby and the remainder of this Declaration shall be construed as if such invalid part was never included therein.

Section 5. Headings. The headings of articles and sections in this Declaration are for convenience of reference only and shall not in any way limit or define the content or substance of such articles and sections.

Section 6. Duration. The covenants and restrictions of this Declaration shall run with and bind the land for a period of twenty (20) years from the date this Declaration is recorded, at the end of which period such covenants and restrictions shall be automatically extended for successive periods of ten (10) years each, unless at least two-thirds (2/3) of the Owners at the time of the expiration of the initial period, or of any extension period, shall sign an instrument in which said covenants and restrictions are modified in whole or in part, which instrument is filed of record in the appropriate county.

Section 7. Rights and Obligations. Each grantee of the Declarant and Owners, by the acceptance of a deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration. All rights, benefits, privileges of every character hereby imposed shall be deemed and taken to be covenants running with the Land and shall bind any person having at any time any interest or estate in the Property or any portion thereof, and shall inure to the benefit of such grantee in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance or contract for conveyance.

Section 8. Notices. Notices provided for in this Declaration shall be in writing and shall be addressed to any Owner at his Lot or at such other address as hereinafter provided. Notices to the Association or Board shall be in writing and shall be addressed to the President of the Association at his/her address which presently is:

William H. Harper, Jr.
W & H Communities, LLC
701 Whitlock Avenue
Suite K-46
Marietta, Georgia 30064

or at such different address or addresses as reflect their proper address. Any Owner may designate a different address for notices to him by giving written notice to the Association. Notices addressed as above shall be deemed delivered upon mailing by United States registered or certified mail or when delivered in person.

Section 9. Intentionally Omitted.

Section 10. 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 to obtain the approval of this Declaration by an institutional lender, such as a bank, savings and loan association or life insurance company, or by a governmental lender or purchaser of mortgage loans, such as 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, such as the Veterans Administration, the Federal Housing Administration or a reputable private insurance company to insure mortgage loans on the Lots subject to this Declaration. Further, this Declaration may be amended at any time and from time to time by an agreement signed by at least sixty-seven (67%) percent of the Owners of Lots; provided, however, such amendment by the Owners shall not be effective unless also signed by Declarant, if Declarant is the owner of any real property then subject to this Declaration. No amendment to the provisions of this Declaration shall alter, modify, change or rescind any right, title, interest or privilege herein granted or accorded to the holder of any mortgage encumbering any Lot or the Common Area affected thereby unless such holder

shall consent in writing thereto. Any such amendment shall not become effective until the instrument evidencing such change has been filed of record. Every purchaser or grantee of any interest in any real property made subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that this Declaration may be amended as provided in this Section.

(e) Notwithstanding the foregoing, or any other provision of this Declaration, for so long as there is a Class B member, the following matters shall require the approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration.

**IN WITNESS WHEREOF**, W & H Communities, LLC and Other Owner, have caused this Declaration to be executed in its name and by its duly authorized officers and its seal affixed on the day and year first above written.

Signed, Sealed and Delivered in the presence of:

Witness

Notary Public
[Notary Seal]

REBEKAH E. SOBEL NOTARY PUBLIC COBB CO., GEORGIA MY COMMISSION EXPIRES JAN 3 2010

W & H COMMUNITIES, LLC

(Seal)
By: William H. Harper, JR.
Title: manager

Signed, Sealed and Delivered in the presence of:

Witness

Notary Public
[Notary Seal]

REBEKAH E. SOBEL NOTARY PUBLIC COBB CO., GEORGIA MY COMMISSION EXPIRES JAN 3 2010

RED OAK CONSTRUCTION, LLC

(Seal)
By: William H. Harper, JR.
Title: member

FOR AMEND SEE
DE Book 14580 Page 3925 ✓ hmg
DE Book 14603 Page 1723 ✓ hmg
DE Book 14610 Page 1499 ✓ mw

Deed Book 14501 Pg 439
Filed and Recorded Jun-12-2007 03:51pm
2007-0094051

Jay C. Stephenson
Clerk of Superior Court Cobb Cty. Ga.

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Space above used for recording information

RETURN TO: SSS
Moore Ingram Johnson & Steele, LLP
192 Anderson Street
Marietta, GA 30060
(770) 429-1499

# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

# FOR

# CHIMNEY HILL TOWNHOMES

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# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CHIMNEY HILL TOWNHOMES

**STATE OF GEORGIA**
**COUNTY OF COBB**

**THIS DECLARATION** (hereinafter referred to as the "Declaration"), made on the date hereinafter set forth by W & H COMMUNITIES, LLC (hereinafter referred to as "Declarant").

**W I T N E S S E T H:**

**WHEREAS,** Declarant is the owner of certain real property located in Land Lot ____ of the ____ District, _____ Section, Cobb County, Georgia, which is more particularly described on Exhibit "A" attached hereto and made a part hereof by reference.

**WHEREAS,** Declarant intends to develop on lands, including the real property described above, a development to be known as Chimney Hill Townhomes (hereinafter sometimes referred to as the "Development or "Community"); and

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

**NOW, THEREFORE,** Declarant hereby declares that all of the properties described on Exhibit "A" referenced above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

## ARTICLE I
## DEFINITIONS

Section 1. Additional Property. This paragraph has been intentionally omitted.

Section 2. Association. "Association" means Chimney Hill Townhomes Association, Inc., (a non-profit corporation organized under the Georgia Nonprofit Corporation Code), its successors and assigns.

Section 3. Board. "Board" means the Board of Directors of the Association.

Section 4. By-Laws. "By-Laws" means the By-Laws of the Association.

Section 5. Common Property or Common Area. "Common Property" or "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners. The Common Property shall include all property outside of the Lots located on the Property, including, but not be limited to, any buffer or detention areas, as shown on the recorded plat for Chimney Hill Townhomes, any private roads, any parking areas, as well as any open space required to be maintained as open space pursuant to Cobb County zoning requirements and any other property deeded to the Association by the Declarant.

Section 6. Declarant. "Declarant" shall mean and refer to W & H Communities, LLC, its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development, and if W & H Communities, LLC, transfers to such successors or assigns its rights as Declarant by written instrument. Any successor or assign who has become Declarant as provided for herein may also transfer Declarant's rights as set forth herein.

Section 7. Lot or Townhome. "Lot" or "Townhome" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Property. The overall boundaries of each Lot or Townhome are more particularly described on Exhibit "B" attached hereto and made a part hereof by reference.

Section 8. Member. "Member" means any member of the Association.

Section 9. Owner. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 10. Property, Properties or Development. "Property or Properties" or "Development" shall mean and refer to that certain real property hereinabove described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 11. Restrictions. "Restrictions" means all covenants, restrictions, easements, charges, liens and other obligations created or imposed by this Declaration.

Section 12. Structure. "Structure" means:

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

(b) any excavation, grading, fill ditch, diversion dam or other thing, or

device which affects or alters the natural flow of surface waters from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial creek, stream, wash or drainage channel from, upon or across any Lot; and

(c) any change in grade at any point on a Lot of more than six (6) inches, whether or not subsection (b) of this Section 12 applies to such change.

## ARTICLE II
## PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Property;

(b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) the right of the Association to dedicate or transfer all or any part of the Common Property to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded.

(d) the right of the Declarant to dedicate the Common Property, subject to the governmental or institutional approvals required herein, to the Association, without the consent of the Association.

Further, every Owner shall have the right to ingress and egress over, upon, and across the Common Area necessary for access to his or her Lot and shall have the right to lateral support for his or her Lot, and such rights shall be appurtenant to and pass with the title to each Lot. There shall be reciprocal appurtenant easements for the maintenance and repair of a party wall or walls, if any.

Section 2. Parking Rights. Owners, their guest and invitees shall park all vehicles in the garage located on each Lot. Once all garage spaces are used, Owners, their guests and invitees shall park their automobiles in the driveway located on the Lot. Once all garage and driveway spaces are occupied by motor vehicles (and not storage), Owners, their gusts and invitees shall be entitled to use any automobile parking spaces located in the Common Area, subject to such reasonable rules and regulations as may be adopted by the Board of Directors. However, in no event, shall any Owner, guest or invitee use said Common Area parking spaces for more than 48 consecutive hours. Temporarily moving a vehicle shall not restart said 48 hour time clock. The

reasoning behind this provision is to ensure that all Owners, their guests and invitees have access to and can make use of these Common Area parking spaces. The Association shall have the right to tow any vehicle in violation of this provision. All costs of towing shall be at the Owner's risk and subject to collection in the same manner as assessments are collected herein. **AT NO TIME SHALL ANY GARAGE BE CONVERTED TO LIVING SPACE.**

Section 3. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Property and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

## ARTICLE III
## MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. Voting Rights. The Association shall have two classes of voting membership:

Class A: Initially, the Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. If multiple owners of a lot cannot unanimously decide how to cast their vote then no vote may be cast regarding the ownership by that particular Lot.

Class B: The Class B member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events:

(a) The date on which seventy five percent (75%) of the Lots located on the Property and any Additional Property which has been added to this Declaration by Declarant have been sold to individuals who reside in dwellings located on said Lots.

(b) Ten (10) years from the date of this Declaration; or

(c) When, in its discretion, the Declarant so determines.

## ARTICLE IV
## COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) quarterly assessments and charges, (2) a one time initiation fee of $300.00 due at the closing of a Lot into a permanent resident, (3) special assessments for capital improvements and (4) specific assessments, such assessments to be established and collected as hereinafter provided. The initiation fee, quarterly, special and specific assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of the Properties and for the improvement and maintenance of the Common Property, including the payment of any utilities and common services provided to the townhomes that are not separately metered.

Section 3. Maximum Quarterly Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum quarterly assessment shall be determined by the Board of Directors. The Board of Directors shall have the authority to collect the assessments pursuant to this paragraph quarterly, semi-annually or annually should the Board so choose.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum quarterly assessment may be increased each year not more than ten percent (10%) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum quarterly assessment may be increased above ten percent (10%) by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the quarterly assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the quarterly assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the

Common Property, including fixtures and personalty related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for any Action Authorized under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum if not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both quarterly and special assessments must be fixed at a uniform rate for all Lots and may be collected on a quarterly basis or annually as determined by the Board.

Section 7. Date of Commencement of Quarterly Assessments: Due Dates. The quarterly assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of a Lot to a permanent resident. The first quarterly assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the quarterly assessment against each Lot. Written notice of the quarterly assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, 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 is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate allowed by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Property or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lien thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Funding of Association Deficit by Declarant. Any time prior to Declarant

relinquishing control of the Association pursuant to this Declaration, Declarant shall have the right, but not the obligation, to lend sums to the Association necessary for the operation and maintenance of the subdivision. Said sums shall be evidenced by a promissory note from the Association to the Declarant and shall be due and payable when Declarant relinquishes control of the Association pursuant to this Declaration.

Section 11. Townhomes Owned by Declarant. Notwithstanding any term or provision of this Declaration which may be construed to the contrary, no Townhome owned by the Declarant shall be subject to any assessment provided for herein. Rather, all Townhomes owned by the Declarant shall be exempt from the payment of all assessments for so long as such Townhomes are owned by the Declarant. At such time as any Townhome which is owned by the Declarant shall be conveyed or transferred away from the Declarant, all liens and assessments provided for herein shall become immediately levied against such Townhome and the Owner of such Townhome shall immediately become liable for the payment of all such assessments. The amount of each Assessment which shall become so payable with respect to any Townhome shall be prorated according to the respective portions of the fiscal year that such Townhome was owned by the Declarant and by such successor owner.

Section 12. Contribution by Declarant. For so long as Declarant has the authority to appoint and remove directors and officers of the Association, Declarant shall not be liable for the payment of any quarterly or special assessments. Provided, however, during said period Declarant may advance funds to the Association, sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association, and the sum of quarterly, special and specific assessments collected by the Association in any Assessment Year, and such advances shall be deemed to be loans to the Association and shall be evidenced by promissory notes from the Association to Declarant, which shall be due and payable upon demand, with interest at a rate of twelve (12) percent per annum after demand.

Section 13. Specific Assessments. The Board shall have the power to levy specific assessments 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 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 this Declaration and the costs of maintenance performed by the Association for which the Owner is responsible shall be specific assessments. The Board of Directors may also specifically assess Owners for Association expenses as follows: (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; and (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.

## ARTICLE V
## ARCHITECTURAL CONTROL

Section 1. Architectural Control Committee - Creation and Composition. An Architectural Control Committee (the "ACC") shall be established consisting of three (3) individuals to be appointed by the Board of Directors; provided, a majority of such individuals must be Owners; also provided, however, that for so long as Declarant owns a Lot, Declarant shall appoint the ACC, in its sole and absolute discretion, unless Declarant surrenders the right to appoint the ACC by written document.

Section 2. Purpose, Powers and Duties of the ACC. The purpose of the ACC is to review and approve any proposed installation, construction or alteration of any Structure on any Lot. All plans shall be submitted to the ACC for approval (a) as to whether the proposed installation, construction or alteration is in conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the standards of the Development, and (b) as to the location of Structures with respect to topography, finished ground elevation and surrounding Structures. To the extent necessary to carry out such purpose, the ACC shall have all of the powers and duties to do each and every thing necessary, suitable, convenient or proper for, or in connection with, or incidental to, the accomplishment of such purpose, including, without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any Structure on any Lot.

Section 3. Officers, Subcommittees and Compensation. The members of the ACC shall appoint a Chairman from among their number and may appoint from among their number such other officers and subcommittees of members of the ACC as they shall from time to time determine necessary. The members of the ACC shall be reimbursed by the Association for reasonable traveling expenses and other reasonable out-of-pocket costs incurred in the performance of their duties as members of the ACC.

Section 4. Operations of the ACC.

(a) Meetings. The ACC shall hold regular meetings at least once every three (3) months or more often as may be established by the ACC. Special meetings may be called by the Chairman and shall be called by the Chairman upon the written request of a majority of the members of the ACC then in office. Regular and special meetings of the ACC shall be held at such time and at such place as the ACC shall specify. Notice of each regular or special meeting of the ACC shall be mailed to each member thereof at his usual place of business at least three (3) days before the day the meeting is to be held. Notice of regular and special meetings need not specify the purpose or purposes for which the meeting is called. Notice of a meeting need not be given to any member of the ACC who signs a waiver of notice either before or after the meeting. Attendance of a member of the ACC at a meeting shall constitute a waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened, except when the member states, at the beginning of the meeting, any such objection or objections to the transaction of business. At each meeting of the ACC the presence of a majority of the members of the ACC present at any regular or special

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

(b) Activities.

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

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

Section 5. Design Standards.

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

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

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

(iii) establishing guidelines with respect to the approval and disapproval of design features, architectural styles, exterior colors and materials, details of construction, location and size of Structures and all other matters that require approval by the ACC pursuant to this Declaration; and

(iv) assuring the conformity and harmony of external design and general quality of the Development.

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

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

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

(b) a foundation plan;

(c) a floor plan;

(d) exterior elevations of all proposed Structures and alterations to existing Structures, as such Structures shall appear after all back-filling and landscaping are completed;

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

(f) plans for landscaping and grading.

Section 7. Approval of Plans and Specifications. Upon approval by the ACC of any plans and specifications submitted pursuant to this Declaration, one (1) copy of such plans and specifications, as approved, shall be deposited for permanent record with the ACC and a copy of such plans and specifications bearing such approval, in writing shall be returned to the applicant submitting the same. Approval for use in connection with any Lot or Structure of any plans and specifications shall not be deemed a waiver of the ACC's right, in its discretion, to disapprove similar plans and specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Lot or Structure. Approval of any such plans and specifications relating to any Lot or Structure, however, shall be final as to that Lot or Structure and such approval may not be revoked or rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specifications, as approved, and any conditions attached to any such approval.

Section 8. Disapproval of Plans and Specifications. The ACC shall have the right to disapprove any plans and specifications submitted pursuant to this Declaration for any of the following reasons:

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

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

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

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

Section 10. Inspection Rights. Any employee or agent of the Association or the ACC may, after reasonable notice, at any reasonable time or times, enter upon any Lot and Structure thereon for the purpose of ascertaining whether the installation, construction, alteration or maintenance of any Structure or the use of any Lot or Structure is in compliance with the provisions of this Declaration; and neither the Association, nor the ACC, nor any such agent shall be deemed to have committed a trespass or other wrongful act solely by reason of such entry or inspection, provided such inspection is carried out in accordance with the terms of this Section.

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

Section 12. Certification of Compliance.

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

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

Section 13. Fees. The ACC may impose and collect a reasonable and appropriate fee to cover the cost of inspection performed pursuant to Section 10. The fee shall be established from time to time by the ACC and published in the Design Standards.

Section 14. Non-Discrimination by ACC. The ACC shall not discriminate against any applicant requesting its approval of plans and specifications because of such applicant's race, color, sex, religion, age or natural origin. Further, the ACC in the exercise of its powers granted pursuant to this Declaration shall not take any action the intent or effect of which is to discriminate against persons of a particular race, color, sex, religion, age or national origin.

Section 15. Liability for Defects. The Declarant, the Association, the Board of Directors, officers of the Association, or the ACC shall not be liable for any defects in any plans and specifications which it approves.

Section 16. Alterations to the Interior of a Townhome. Except as provided herein, no Owner shall make any changes, alterations, modification or construction to the interior of a townhome that involves connecting to a pipe, line, conduit and/or other apparatus for access to common utilities, or places an excessive load on any structural or load bearing portions of a townhome or otherwise negatively impacts the structural integrity of the townhome and any adjoining townhomes without first obtaining the prior written approval of the ACC. Such approval shall not be granted by the ACC unless the Owner has presented to the ACC a report and/or drawing prepared by a licensed structure engineer showing that compensating measures will be taken to ensure the structural integrity of the townhome and any adjoining townhomes. All building code requirements must be complied with and necessary permits and approvals for the proposed change, alteration, modification or construction shall be secured by an Owner at Owner's sole expense.

## ARTICLE VI
## GENERAL COVENANTS AND RESTRICTIONS

The following covenants and restrictions shall apply to all Lots and to all Structures erected or placed thereon:

Section 1. Residential Use. All Lots shall be restricted exclusively to single-family residential use. The use of a portion of a dwelling as an office by an Owner shall not be considered to be a violation of this covenant if such use does not create regular customer, client or employee traffic. The use of a dwelling or a portion thereof for business meetings, entertainment, or the enjoyment or business of the Owner's employees, trustees, agents, clients, or customers shall not be considered to be a violation of this covenant if such use does not create regular customer, client or employee traffic. Nothing herein shall be construed to prohibit or prevent Declarant or any builder of residences on the Property from using any Lot owned by Declarant or such builder for the purpose of carrying on business related to the development and sale of Lots and/or new homes on Lots.

Section 2. Common Property. The Common Property shall be used by the Owners and Declarant, and their agents, servants, tenants, family members, invitees and licensees for such other purposes as may be authorized by the Association.

Section 3. Debris. No rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of an Owner's Lot so as to render the same unsanitary, unsightly or offensive. No nuisance shall be permitted to exist upon any portion of the Property.

Section 4. Erosion Control. No activity which may create erosion or siltation problems shall be undertaken on any Lot except for the initial construction of residences and development of the Property unless the same is approved by the Architectural Control Committee.

Section 5. Signs.

(a) No signs whatsoever shall be installed, altered or maintained on any Lot, or on any portion of a Structure visible from the exterior thereof, except:

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

(ii) not more than one "For Sale" or "For Rent" sign, which is subject to the approval of the Architectural Control Committee, provided, however, that in no event shall any such sign be larger than three (3) square feet in area; and

(iii) directional signs for vehicular or pedestrian safety;

(iv) entry signs used to identify subdivision, marketing signs used to advertise subdivision by Declarant and in conjunction therewith brochure holders.

(b) Following the consummation of the sale of any Lot, the sign located thereon shall be removed immediately.

(c) No signs whatsoever shall be installed, altered or maintained on any Lot, or on any portion of a Structure visible from the exterior thereof, for the purpose of expressing any opinion or allegations Owner may have with respect to Declarant, the Property, any builder, any neighbors, or anyone affiliated with Chimney Hill Townhomes other than one sign in support of a political candidate per candidate supported no longer than three (3) square feet in size and not closer than five (5) feet from adjacent Owner's property. The intent of this provision is to maintain property values, to maintain the integrity of the community, and to promote a peaceful residential setting in which all Owners can live without being subjected to controversy in the residential setting.

Section 6. Fences. All fences erected on any portion of the Property shall be subject to the PRIOR WRITTEN APPROVAL of the ACC.

Section 7. Recreational Vehicles, Trailers, etc. Recreational vehicles, trailers, campers, trucks (except pickups and passenger vans), travel buses or any such equipment are not permitted on any Lot, the Common Property, or to be parked on streets within the Property, except that a visitor may park a recreational vehicle in a driveway on a Lot for a period not to exceed forty-eight (48) hours for each thirty (30) day period, provided the Architectural Control Committee receives advance notice of the time the vehicle will be so parked and that the vehicle does not protrude into traffic lanes. No inoperative vehicle shall be parked on any Lot for any period of time in excess of fourteen (14) days. No Owners or occupants of any Lot or parcel of land shall repair or restore any vehicle of any kind upon any lot or upon any parcel of land, except for emergency repairs, and then only to the extent necessary to enable the movement thereon to a proper repair facility. Notwithstanding the foregoing, vehicles which are for construction, maintenance or repair may be located on the Property or on a Lot; provided, however, no such vehicle shall remain on a Lot or on the Property in excess of forty-eight (48) hours without written approval of the Architectural Control Committee. Notwithstanding the foregoing, Declarant or its successors who take any of the Property for the purpose of developing residential townhouses thereon may temporarily park or store such vehicles or trailers as is necessary to facilitate such development. No more than two (2) cars per dwelling shall be parked anywhere on the Property at any one time, except for visitors.

Section 8. Recreational Equipment. No recreational, playground equipment or basketball goals shall be placed or installed on any Lot without the approval of the Architectural Control Committee.

Section 9. Accessory Structures. Any and all accessory structures, including garages, placed on any Lot must be approved, in advance, in writing by the Architectural Control Committee.

Section 10. Improvement of Lots. All construction of dwellings, accessory structures and all other improvements on the Property shall be undertaken and completed in accordance with the following conditions:

(a) All construction shall be carried out in compliance with the laws, code, rules, regulations and orders of all applicable governmental agencies and authorities.

(b) Concrete block or cinder block shall not be used as a building material for the exposed exterior surface of any dwelling or accessory structure constructed or placed on any Lot.

(c) No lumber, bricks, stones, cinder blocks, scaffolding, mechanical devices, or any other materials or devices used for building purposes shall be stored on any Lot except for purposes of construction of a dwelling or accessory structure on such Lot nor shall any such building materials or devices be stored on any Lot for longer than

the length of time reasonably necessary for the construction in which such materials or devices are to be used.

(d) Except as used by Declarant or any builder during construction on and development of the property, no exposed above-ground tanks for the storage of fuel or water or any other substance shall be located on any Lot other than apparatus relating to solar energy, the location and design of which must first be approved by the Architectural Control Committee.

Section 11. Animals. No animals, including birds, insects and reptiles, may be kept on any Lot unless kept thereon solely as household pets and not for commercial purposes. All animals must be kept indoors except when on a leash and being walked. No animal shall be allowed to become a nuisance.

Section 12. Accessory Structures Installed by Declarant. Entry signs, fences, walls and landscaping installed by Declarant on the Property shall be and are hereby dedicated to the use and benefit of all owners, and shall not be removed or altered without a two-third (2/3) vote of the Association Class A members.

Section 13. Miscellaneous Fixtures. To provide a neat, attractive and harmonious appearance throughout the neighborhood, no awnings, shades, or window boxes shall be attached to, or hung or used on the exterior of, any window or door of any house; and no railings, fences, or walls shall be installed or constructed upon any lot or parcel of land without the prior written consent of the Architectural Control Committee. Further, no foil or other reflective material shall be used on any windows or sunscreens, blinds, shades or for any other purpose, nor shall any window mounted heating, air-conditioning or fan units be permitted. All blinds, shutters, drapes, etc., placed in the Unit must be white on the back. Outside clotheslines or other outside facilities for drying or airing clothes are specifically prohibited and shall not be erected, placed or maintained upon any lot or parcel of land, nor shall any clothing, rugs or other items be hung on any railing, fence, hedge or wall.

Section 14. Antennae. No television antenna, radio receiver, satellite dish or other similar device shall be attached to or installed on any portion of the Property, unless said antenna, radio receiver, satellite dish or other device is one meter or less in diameter and is installed at the rear of the residence, nor shall radio or television signals, nor any other form of electromagnetic radiation, be permitted to originate from any Lot which may unreasonably interfere with the reception of television or radio signals within the Subdivision; provided, however, that the Association shall not be prohibited from installing equipment necessary for master antenna, security, cable television, mobile radio or other similar systems within the Subdivision, and should cable television services be unavailable and adequate television reception not be otherwise available, then an Owner may make written application to the Architectural Control Committee for permission to install a television antenna. The location of the placement of a satellite dish that is one meter or less in diameter shall be subject to the approval, **in writing**, of the Architectural Control Committee except that said committee must allow a placement at a location on an Owner's Lot where reception can reasonably be obtained.

Section 15. Traffic Regulations. All vehicular traffic on the private streets and roads in Chimney Hill Townhomes shall be subject to the provisions of the laws of the State of Georgia and Cobb County concerning operation of motor vehicles on public streets. The Association is hereby authorized to promulgate, administer, and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including reasonable safety measures and speed limits and including modifications of those in force on public streets, within the Chimney Hill Townhomes. The Association shall be entitled to enforce same by establishing such enforcement procedures as it deems appropriate, including levying fines for the violation thereof. In the event of a conflict between such provisions of the laws of the State of Georgia and Cobb County and such rules and regulations promulgated by the Association, the rules and regulations of the Association shall govern drivers licensed to operate motor vehicles by the State of Georgia or by any other state in the United States may operate any type of motor vehicle within Chimney Hill Townhomes. All vehicles of any kind and nature which are operated on the streets of Chimney Hill Townhomes shall be operated in a careful, prudent, safe, and quiet manner, and with due consideration for the rights of all residents of Chimney Hill Townhomes.

Section 16. Impairment of Townhomes and Easements. An Owner shall do no act nor any work that will impair the structural soundness or integrity of any Townhome or impair any easement or other interest in real property, nor do any act nor allow any condition to exist which will adversely affect the other townhomes or their Owners or Occupants.

Section 17. Decks and Terraces. No objects other than potted plants and patio furniture shall be placed on a front porch, back patio, deck or terrace. One gas grill shall be allowed on the back patio. This prohibition applies to objects such as, but not limited to, bicycles, laundry garments, towels, storage boxes and containers and objects other than potted plants and patio furniture, except as may be authorized in writing by the Board. Enclosure of a deck or terrace is also prohibited. As used herein, "enclosure" shall mean the permanent enclosure of a deck or terrace into the heated and cooled space of a townhome. Further, no storage boxes, containers, trash cans or other objects other than vehicles and potted plants shall be placed on any driveway.

Section 18. Entry Features and Street Signs. Owners shall not alter, remove or add improvements to any entry features or street signs constructed by the Declarant on any Lot or Townhome, or any part of an easement area associated therewith without the prior written consent of the ACC.

Section 19. Lighting. The following exterior lighting may be installed without the necessity of obtaining the prior approval of the Architectural Committee; (a) seasonal decorative lights during the holiday season; (b) illumination of other than the front or side yard of the Townhome; providing does not create a nuisance for the adjoining Townhomes; (c) illumination of model Townhomes and entrance features constructed by the Declarant. Plans for all other exterior lighting must be submitted and approved by the ACC.

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 Townhome, including the Portico, Patio or any Easement Area, without the prior written consent of the Architectural Committee.

Section 21. Pools. Pools, of any sort whatsoever, shall not be permitted on the Property.

Section 22. Obstruction of Ingress and Egress. No Owner, tenant or guests shall obstruct the right of ingress and egress to any Townhome.

Section 23. Guns. The use of firearms on the Property is prohibited. The term "firearms" includes B-B guns, pellet guns and firearms of all types.

Section 24. Clotheslines, Garbage Cans, Woodpiles, Etc. All garbage cans, woodpiles, and other similar items shall be located or screened so as to be concealed from view of neighboring Townhomes, streets and property located adjacent to the Townhome. All rubbish, trash and garbage shall regularly be removed from the Portico, Townhome, Patio and Easement Area and shall not be allowed to accumulate thereon. Declarant, however, expressly reserves the right to dump and bury rocks and trees on the property within the Development as needed for efficient construction and to allow developers and builders within the Development to do so. No clothesline shall be permitted on any Portico, Townhome, Patio or Easement Area.

Section 25. Window Air-Conditioning. No air-conditioner or fan shall be installed in any window of any Townhome, nor shall any air-conditioner be installed on any Townhome so that the same protrudes through any exterior wall of such Townhome.

Section 26. Nuisances. No nuisance shall be permitted upon or within any Townhome. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any Townhome.

Section 27. Subdivision of Townhomes. No Townhome may be further subdivided into any smaller Townhome.

Section 28. 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 devises, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken in any part of the Development. Garage doors must be kept closed at all times except for ingress and egress. Garbage cans must be kept in the garage at all times except for trash day.

Section 29. Notice of Sale or Lease. In the event the Owner sells or leases his or her Townhome, the Owner shall give to the Association, in writing, the name of the Purchaser or lessee of the Townhome and such other information as the Board may reasonably require.

## ARTICLE VII
## EASEMENTS, ZONING AND OTHER RESTRICTIONS

Section 1. Easements.

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

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

(ii) the erection, installation, construction and maintenance of storm-water drains, land drains, public and private sewers, irrigation systems, pipelines for supplying gas, water and heat, and for any other public or quasi-public facility, service or function;

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

(iv) the planting or re-planting of hedges, shrubbery, bushes, trees, flowers and plants of any nature;

(v) the erection, installation, construction and maintenance of fences, walls, monuments, signs, etc. along streets in, around and along and at entrances to the Development, and the right to landscape such areas, plant, re-plant and prune hedges, shrubbery, bushes, trees, flowers, grass and plants of any nature.

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

(c) The Declarant hereby reserves for itself, its successors and assigns, across the Property perpetual easements appurtenant to all or any portion of the Property for the following uses and purposes:

(i) An easement for ingress and egress by vehicular and pedestrian traffic over (1) such drives, roadways, walkways and paths as are shown on the plat or plats recorded in connection with the Property, and (2) such drives, roadways, walkways and paths as may be constructed in the future; and

(ii) An easement for the purpose of installing, operating, maintaining and replacing wires, pipes, conduits and other structures and facilities necessary to the furnishing of gas, water, sewerage, storm drainage, electricity, street lights, telephone, and other utilities and services, including the right to use in common with the Owners of the Property, the wires, pipes, conduits, and other structures and facilities furnishing such utilities and services to such Owners.

(d) In addition to the above, the Declarant hereby grants a general easement in favor of utility, cable television and other such service companies across the Property, to maintain, repair, replace and service wires, pipes, conduits, street lights and other structures and facilities provided for the benefit of the Owners.

(e) The easements created in this Article VII are in addition to any easements or rights created elsewhere in this Declaration or in other easements of record. The provisions of this Article VII may not be amended without the written consent of the Declarant, its successors and assigns.

Section 2. Easement Area. The words "Easement Area" as used herein shall mean those areas on any Lot with respect to which easements are shown on a recorded deed or on any filed or recorded map or plat relating thereto or easements referenced herein.

Section 3. Entry. The Declarant and its employees, agents, successors and assigns shall have the right at all reasonable times to enter upon all parts of each Easement Area for any of the purposes for which such Easement Area is reserved without being deemed to have committed a trespass or wrongful act solely by reason of such entry and the carrying out of such purposes, provided the same are done in accordance with the provisions of this Article. The Declarant and its employees, agents, successors and assigns shall be responsible for leaving each Lot in good condition and repair following any work or activity undertaken in an Easement Area pursuant to the provisions of Section 1.

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

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

Section 6. Drainage. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstruction or debris shall be placed in these areas. No Owner or Occupant of any Townhome may obstruct or re-channel the drainage flows after the location and installation of drainage swales, storm sewers or storm drains. Declarant reserves the right to prepare sloping banks, cut or fills on all streets and roads. Declarant hereby reserves a perpetual easement across all Common Property and Easement Areas for the purpose of altering drainage and water flow. Rights exercised pursuant to such reserved easement shall be exercised with a minimum interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be required by the Person causing the damage at its sole expense.

Section 7. Utility Easement. Declarant hereby grants a general easement in favor of Declarant, the Association, any utility companies, and all Owners, their successors and assigns on and under all Townhomes for the installation, use and maintenance of all pipes, wires, cables, conduits, utility lines, flues and ducts serving any portion of the Property. Declarant hereby further grants a general easement in favor of Declarant, the Association, any utility companies, and all Owners, their successors and assigns to install, read and maintain electrical meters located on any Townhome. The Board, and without a vote of the Owners, shall have the right, power and authority to grant permits, licenses, utility easements and other easements, permits or licenses necessary or desirable for the proper maintenance or operation of the Property under, through or over the Townhomes and/or the Common Property as may be reasonably necessary to or desirable for the ongoing operation of the Property. In the event that any Owner desires access to another Unit to install, maintain, repair or replace any utility pipe, wire, cable, conduit, utility line, flue or duct, the Owner shall contact the Owner of such other Unit(s) at least two (2) days in advance of the date that access is needed and attempt to agree on a convenient date and time foraccess by the Owner and the Owner's contractors. Access in emergency situations shall be granted immediately upon request. Any Owner of a Unit to which access is needed under this Section shall not unreasonably withhold, condition or delay such access. Rights exercised pursuant to this easement shall be exercised with a minimum of interference to the quiet enjoyment of affected Units, reasonable steps shall be taken to protect such Units and the property of the Owners and Occupants thereof, and damage shall be repaired by the person or company causing the damage at its sole expense.

## ARTICLE VIII
## ENFORCEMENT

Section 1. Right of Enforcement. This Declaration and the Restrictions contained herein shall inure to the benefit of and shall be enforceable by (i) the Declarant so long as it is an Owner, (ii) the Association and (iii) each Owner, his legal representatives, heirs, successors and assigns.

Section 2. Right of Abatement.

(a) Except where different notice provisions are provided in this Declaration, in the event of a violation or breach of any Restriction contained in this Declaration, the Association shall give written notice by certified mail to the Owner setting forth in reasonable detail the nature of such violation or breach, and the specific action or actions needed to be taken to remedy such violation or breach. If the Owner shall fail to take reasonable steps to remedy such violation or breach within thirty (30) days after the mailing of such written notice, then the Association shall have the Right of Abatement.

(b) The Right of Abatement, as used in this Section and in other sections of this Declaration, means the right of the Association, through its agents and employees, to enter at all reasonable times upon any Lot or Structure, as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove or repair such violation, breach or other condition which may exist thereon contrary to the provisions hereof, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and such actions, provided such entry and such actions are carried out in accordance with the provisions of this Section, and with the cost thereof, including the costs of collection and reasonable attorney's fees, together with interest thereon at the lower of the highest rate permitted by law or 12% to be a binding personal obligation of such Owner enforceable in law, as well as a lien on such Owner's Lot enforceable pursuant to the provisions of Section 4 hereof. Such lien shall be superior to any and all charges, liens or encumbrances which may in any manner arise or be imposed upon the Lot after such entry whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, excepting only (i) such liens for taxes or other public charges as are by applicable law made superior, (ii) the liens created by Section 4.01 hereof and (iii) all deeds to secure debt given to secure a loan the proceeds of which are used (1) to purchase a lot or lots (together with any and all Structures which may from time to time be placed or located thereon) and (2) to finance the construction, repair or alteration of Structures.

Section 3. Specific Performance. Nothing contained in this Declaration shall be deemed to affect or limit the rights of the Declarant, the Association or any Owner to enforce the Restrictions by appropriate judicial proceedings or to recover damages. However, it is hereby declared that it may be impossible to measure accurately in money the damages which will accrue to a beneficiary hereof, its transferees, successors or assigns, by reason of a violation of, or failure to perform any of the obligations provided by, this Declaration; and, therefore, any

beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

Section 4. Collection of Assessments and Enforcement of Lien.

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

(b) As an additional remedy, but in no way as a limitation on the remedies, if any assessment, interest, cost or other charge is not paid as required by this Declaration, each Owner hereby grants to the Association and its assigns the following irrevocable power of attorney to sell the said Lot or Lots subject to the lien at auction, at the usual place for conducting sales at the Courthouse in Cobb County, Georgia, to the highest bidder for cash, after advertising the time, terms and place of such sale once a week for four weeks immediately preceding such sale (but without regard to the number of days) in the paper in which the Sheriff's advertisements for Cobb County, Georgia are published, all other notice being hereby waived by each Owner, and the Association or any person on behalf of the Association, or assigns, may bid and purchase at such sale and thereupon execute and deliver to the purchaser or purchasers at such sale a conveyance of said property in fee simple, which conveyance shall contain recitals as to the happenings of the default upon which the execution of the power of sale herein granted depends, and each Owner hereby constitutes and appoints the Association and assigns, the agent and attorney in fact of each Owner to make such recitals, and hereby covenants and agrees that the recitals so to be made by the Association, or assigns, shall be binding and conclusive upon the Owner whose property is the subject matter of such sale, and the heirs, executors, administrators and assigns of such Owner, and that the conveyance to be made by the Association or assigns, shall be effectual to bar all equity of redemption of such Owner, or the successors in interest of such Owner, in and to said Lot or Lots, and the Association or assigns shall collect the proceeds of such sale, and after reserving therefrom the entire amount of assessment, interest, cost or other charge due, together with all costs and expenses of sale and fifteen percent of the aggregate amount due for attorney's fees, shall pay any excess to such Owner, or to the heirs or assigns of such Owner as provided by law. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise and are granted as cumulative to the remedies for collection of said indebtedness provided by law.

(c) WAIVER. EACH OWNER, BY ACCEPTANCE OF A DEED CONVEYING A LOT SUBJECT TO THIS DECLARATION, WAIVES ANY RIGHT WHICH OWNER MAY HAVE UNDER THE CONSTITUTION OR THE LAWS OF THE STATE OF GEORGIA OR THE CONSTITUTION OR LAWS OF THE UNITED STATES OF AMERICA TO NOTICE OR TO A JUDICIAL HEARING PRIOR TO THE EXERCISE OF ANY RIGHT OR

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

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

Section 6. Fines/Occupants Bound. The Board of Directors may impose fines or other sanctions, for violations of this Declaration, said fines to be collected as provided herein for the collection of assessments. 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 sanctions against Owners shall also apply to all Occupants of any Townhome even though Occupants are not specifically mentioned. Fines may be levied against Owner or Occupant. If a fine is first levied against an Occupant and is not paid timely, the fine shall then be levied against the Owner.

Section 7. The Board shall have the right to record in the appropriate land records a notice of violation of this Declaration, Bylaws, or any rules, regulations, use restrictions, or design guidelines promulgated by the Association and to assess the cost of recording and removing such notice against the foregoing.

## ARTICLE IX
## DURATION AND AMENDMENT

Section 1. Duration and Perpetuities.

(a) The provisions of these covenants shall run with and bind the land and shall be and remain in effect perpetually to the extent permitted by law. Provided, however, so long as Georgia law limits to twenty (20) years, the period during which covenants restricting lands to certain uses may run, any provisions of these Covenants affected thereby shall run with and bind the land for a period of twenty (20) years from the date these Covenants are filed for record in the Office of the Clerk of the Superior Court of Cobb County, Georgia, after which time such provisions shall be automatically extended, if permitted by law, for successive periods of ten (10) years, unless an instrument, signed by at least seventy-five percent (75%) of the then Owners of record and the holders of first mortgages on their Lots has been recorded in the Office of the

Clerk of said Court, agreeing to terminate or change such provisions in whole or in part. Every purchaser or grantee of any interest in any portion of the Property, by acceptance of a deed or other conveyance thereof, thereby agrees that the provisions of these Covenants may be extended and renewed as provided in this section.

(b) If any of the covenants, conditions, restrictions, easements or other provisions of these Covenants 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 survivor of the now living descendants of Her Majesty Queen Elizabeth II, the Queen of England.

Section 2. Amendment. These Covenants may be amended unilaterally at any time and from time to time by Declarant (i) 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, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to these Covenants, (iii) 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 these Covenants, or (iv) if such amendment is necessary to enable any governmental agency, such as the Federal Housing Administration, the Veterans Administration, or reputable private insurance company to insure mortgage loans on the Lots subject to these Covenants; provided any such amendment shall not adversely affect the title to any Owner's Lot, unless any such Owner so affected thereby shall consent thereto in writing. These Covenants may be amended at any time and from time to time by an agreement signed by at least sixty-seven (67%) percent of the Owners; provided, however, such amendment by the Owners shall not be effective unless also signed by the Declarant, if Declarant is the owner of any real property subject to these Covenants. No amendment to the provisions of these Covenants shall alter, modify, change or rescind any right, title, interest or privilege herein granted or accorded to the holder of any mortgage encumbering any Lot or the Common Property affected thereby unless such holder shall consent in writing thereto. Any such amendment shall not become effective until the instrument evidencing such change has been filed of record in the Office of the Clerk of the Superior Court of Cobb County, Georgia. The written consent thereto of any mortgage holder affected thereby shall also be filed with such amendment. Every purchaser or grantee of any interest in any real property now or hereafter subject to these Covenants, by acceptance of a deed or other conveyance therefore, thereby agrees that these Covenants may be amended as provided in this Section.

## ARTICLE X
## PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the residences upon the Properties and placed on the dividing line between two or more Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The reasonable repair and maintenance of a party wall, common roof, gutters, and downspouts not covered by insurance shall be shared by the owners who make use of such in proportion to such use.

Section 3. Weatherproofing. Notwithstanding any other provisions of this Article, an Owner who by his or her negligence or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 4. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 5. 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 party wall or fence may restore it. If other Owners thereafter use the wall or fence, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions. In the event of the occurrence of any damage or destruction by fire or other casualty to any one or more Townhomes, such damage or destruction shall be repaired or rebuilt in all events.

Notwithstanding the foregoing, all repair, reconstruction or rebuilding of any Townhome or portion thereof shall be substantially in accordance with the plans and specifications for such damaged or destroyed Townhome prior to the occurrence of such damage, or in accordance with such differing plans and specifications as are approved for such purpose by both the owner of the Townhome which is to be so repaired, reconstructed or rebuilt, and by the Board of Directors. The work of repairing, reconstructing or rebuilding any damaged or destroyed Townhome shall be completed as soon after the occurrence of such damage or destruction as is reasonably practicable at no cost or expense to the Association. The Owner of any Townhome which is to be repaired, reconstructed or rebuilt pursuant to the provisions herein shall be responsible for the completion of such work in the manner, and within the time requirements, set forth herein.

Section 6 Arbitration. In the event of any dispute, each party shall appoint one (1) arbitrator. Should any party refuse to appoint an arbitrator within ten (10) days after written request by the Board of Directors, the Board shall appoint an arbitrator for the refusing party. The arbitrators appointed shall appoint one (1) additional arbitrator. The decision by a Majority of all three (3) 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 XI
## MISCELLANEOUS

Section 1. Other Changes. Notwithstanding any other provisions hereby which may be construed to the contrary, unless at least two-thirds (2/3) of the first mortgagees (based upon one vote for each first mortgage owned) or Owners (other than the Declarant) of the individual Lots

in the Development have given their prior written approval, the Association shall not be entitled to:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Property owned, directly or indirectly, by such Association (the granting of easements for public utilities or for other public purposes consistent with the intended use of such common area or property by the Association shall not be deemed a transfer within the meaning of this clause);

(b) change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;

(c) by act or omission change, waive or abandon, any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of dwellings on the Lots of the Development, the exterior maintenance of Lots and improvements thereon, the maintenance of the Common Property or party walks or common fences or common roadways and driveways, or the upkeep of lawns and plantings in the Development;

(d) fail to maintain fire and extended coverage on insurable Association Common Property if any, on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost);

(e) use hazard insurance proceeds for losses to any Association Common Property for other than the repair, replacement or reconstruction of such property.

Section 2. Rights of First Mortgagees.

(a) First mortgagees of Lots in the Development may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Association's Common Property and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy, for such Common Property and first mortgagees making such payments shall be owed immediate reimbursement therefore from the Association. Despite any other provision of this Declaration which may be interpreted otherwise, it is expressly intended that no Owner or any other party have priority over any rights of the first mortgagee of a Lot pursuant to its mortgage or security deed in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Association Common Property.

(b) In addition to the rights of mortgagees elsewhere provided, each first mortgagee of a Lot, upon request, shall (i) be entitled to written notice from the Association of any default in the performance of his obligations under the Development documents of an Owner which is not cured within sixty (60) days; (ii) be entitled to attend and observe all meetings of Owners, but not meetings of the Board; (iii) be entitled to be furnished copies of quarterly financial reports made to the Owners; and (iv) be

entitled to inspect the financial books and records of the Association during reasonable business hours.

(c) Notice to Association. Upon request, each Townhome Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Townhome.

(d) Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation (The Mortgage Corporation), the following provisions apply in addition to and not in lieu of the foregoing. Unless two-thirds (2/3) of the first Mortgagees or Owners other than the Declarant, give their consent, the Association shall not:

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

(f) Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner;

(g) By act or omission change, waive or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Townhomes and of the Association Property (the issuance and amendment of architectural standards, procedures, rules and regulations or use restrictions shall not constitute a change, waiver or abandonment within the meaning of this subsection);

(h) Fail to maintain insurance, as required by this Declaration; or use of hazard insurance proceeds for any Association Property losses for other than the repair, replacement or reconstruction of such property.

Nothing contained in this Section shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration for any of the acts set out in this Section.

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

Section 3. No Reverter. No restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

Section 4. Severability. A determination by a court that any provision hereof is invalid for any reason shall not affect the validity of any other provision hereof.

Section 5. Headings. The headings of the Articles and Sections hereof are for convenience only and shall not affect the meaning or interpretation of the contents of this Declaration.

Section 6. Gender. Throughout this Declaration, the masculine gender shall be deemed to include the feminine and neuter, and the singular, the plural, and vice versa.

Section 7. Notices. All amendments, notices, requests, objections, waivers, rejections, agreements, approvals, disclosures or consents of any kind made pursuant to this Declaration, whether made by the Declarant, the Association, the ACC, the Owner, or any other person, shall be in writing. All such writings shall be sufficient only if deposited in the United States Mail, with sufficient postage, and sent to the following addresses:

(a) Declarant: W & H Communities, LLC
P.O. Box 5074
Marietta, GA 30061

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

Any written communication transmitted in accordance with this Section 7 shall be deemed received on the third (3rd) day following the day such written notice is deposited in the United States Mail.

Section 8. Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to make the Community safer than they otherwise might be. **NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE COMMUNITY. NEITHER THE ASSOCIATION, THE DECLARANT, NO ANY SUCCESSOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE FOR FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURED UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY UNIT, AND ALL TENANTS, GUESTS AND INVITEES OF ANY OWNER, ACKNOWLEDGE THAT THE ASSOCIATION, AND ITS BOARD OF DIRECTORS, DECLARANT, ANY SUCCESSOR DECLARANT, AND THE ACC DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM, OR OTHER SECURITY SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY THE DECLARANT OR THE ACC, IF ANY, MAY NOT BE COMPROMISED OR CIRCUMVENTED; NOR THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS, IF ANY, WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP. ASSAULT OR OTHERWISE; NOR THAT FIRE PROTECTION OR BURGLAR ALARM SYSTEMS**

**OR OTHER SECURITY SYSTEMS, IF ANY, WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. ALL OWNERS AND OCCUPANTS OF ANY UNIT, AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER, ACKNOWLEDGE AND UNDERSTAND THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT ARE NOT INSURERS, ALL OWNERS AND OCCUPANTS OF ANY UNIT AND ALL TENANTS, GUESTS AND INVITEES OF ANY OWNER RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS, IF ANY, RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE COMMUNITY.**

Section 9. No Liability. Declarant has, using best efforts and all due diligence, prepared and recorded this Declaration so that each and every Owner shall have the right and the power to enforce the terms and provisions of this Declaration against every other Owner. However, in the event that this Declaration is, for any reason whatsoever, unenforceable by an Owner (or any other person) in a court of law or otherwise, Declarant shall have no liability of any kind as a result of such unenforceability, and each and every Owner, by acceptance of a deed conveying a Lot acknowledges that Declarant shall have no such liability.

Section 10. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties other than pursuant to an already approved plan; dedication of Common Property; and amendment of this Declaration of Covenants, Conditions and Restrictions.

Section 11. Management Fee. Declarant, or an entity it designates, shall have the right to manage the Association and charge a reasonable quarterly charge for said management. The quarterly charge shall be commensurate with the number of lots managed and shall not exceed $10.00 per lot, per month. After Declarant has sold the last Lot, the Association may, but shall not be obligated to, obtain and pay for the services of any person or other entity to manage the affairs of the Association, or any part thereof, and may enter into such agreements for the management of the Association Property as the Board of Directors deems to be in the best interests of the Association.

Section 12. Variances. The Board of Directors shall have the authority to grant variances from the provisions of this Declaration in the event of hardship using criteria established by the Board.

Section 13. Mold and/or Mildew. Mold and/or mildew can grow in any portion of the Community that is exposed to elevated levels of moisture. Each Owner agrees to: (a) regularly inspect any and all portions of his or her Lot which are visible and accessible without having to first conduct invasive testing, for the existence of mold, mildew, and/or water intrusion (except when the water intrusion is part of the normal functioning of improvements and

appliances such as showers, sinks, dishwashers, and other similar appliances and improvements) and/or damage; (b) upon discovery, immediately repair in a good and workmanlike condition the source of any water intrusion on the Lot; (c) remediate or replace any building material located on the Lot that has absorbed water or moisture as a result of water intrusion; and (d) promptly and regularly remediate all mold and/or mildew discovered on the Lot in accordance with current industry-accepted methods. In addition, each Owner agrees to notify the Association of the discovery of mold, mildew, and/or water intrusion and/or damage on a Lot. Each Owner further agrees not to block or cover any of the heating, ventilation or air-conditioning ducts located in the Townhome.

Notwithstanding anything to the contrary herein, Declarant shall have no obligation to perform any invasion testing or inspections, maintenance or repairs in accordance with this Section, and shall not be held liable for any loss or damage caused by the failure of Owners to perform their obligations herein.

Section 14. Single-Family Use. All of the Townhomes shall be restricted exclusively to single-family residential use. The term "single-family" shall include one or more related or unrelated adults, as well as the children of any such adults. No Townhome shall at any time be used for any commercial, business or professional purpose. Notwithstanding the foregoing, however, nothing set forth in this Section shall prohibit: (a) the Declarant from conducting such sales, leasing and promotional activities on any Townhome as the Declarant shall determine (including, but not limited to, using any Townhome as a model home and a sales office); or (b) the owner of any Townhome from using such Townhome as an office, provided that such use does not create regular customer or client traffic to and from such Townhome and no sign, logo, symbol or nameplate identifying such business is displayed anywhere on such Townhome.

Section 15. Leasing Units. All Units shall be offered as "for sale" by Declarant or by a builder of Townhomes on the Property. Thereafter, the leasing of any Townhomes shall be limited to no more than 10% of the total number of Townhomes located on the Property.

## ARTICLE XII
## MAINTENANCE RESPONSIBILITIES
## MAINTENANCE: CONVEYANCE OF PROPERTY TO ASSOCIATION

Section 1. Association's Responsibilities. The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair and replacement, subject to any insurance then in effect, of all landscaping and improvements situated on the Common Property. The Association shall also maintain (a) all entry features for the Property, including the landscaping associated therewith (whether or not such landscaping is on a Lot or public right-of-way), and any irrigation system and the expenses for water and electricity, if any, provided to all such entry features, (b) all property outside of Lots located within the Property which was originally maintained by Declarant, including private streets, if any, and (c) pay for any utilities or other common services provided to the Lots which are not separately metered.

In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association where the Board has determined that such maintenance would benefit all Owners.

In the event that the Association determines 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 and paid for by insurance, in whole or in part, then the Association may perform such maintenance, repair or replacement at such Owner's sole cost and expense, and all costs thereof 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 of such Owner.

From the time that the Common Property, or any portion thereof, is opened and put into use for the enjoyment of Property Owners, Declarant shall be and remain wholly free and clear of any and all liability to, or claims by, all Owners, and all persons and entities, of whatever kind or character, whether sounding in contract or tort, deriving from the occurrence of any injury or damage to any person or property on, or in respect of the use and operation of, the Common Property or any of its improvements, fixtures and facilities; inasmuch as the control, operation, management, use and enjoyment, of the Common Property shall be within, under and subject to the Association and not Declarant. In this respect, its shall be the affirmative duty and responsibility of each Owner and user of any facilities located on the Common Property to continuously inspect the same for any defects or perils or other unsafe conditions or circumstances, prior to and thereof; and all users of, and visitors to, the Common Property and its improvements and facilities shall use, enjoy and visit, the same at their own risk and peril.

Section 2. Owner's Responsibility. Except as provided in Section 1 above, all maintenance of the Lot and all Structures, any landscaping, and other improvements thereon 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. By way of explanation and not limitation, Owners shall be responsible for maintaining their respective Townhome, including but not limited to the exterior and roof thereof. The Community Wide Standard as used in this paragraph shall mean and refer to the standard of conduct, maintenance or other activity generally prevailing in the Property. Such standard may be more specifically determined by the Board of Directors of the Association but must be consistent with the Community-Wide Standard originally established by the Declarant. In the event that the Board of Directors of the Association determines that 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, the Association shall, except in 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. The Owner shall have ten (10) days after receipt of such notice 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, 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. The remedies provided in the Section shall be in addition to, and not in lieu of, other remedies provided in this Declaration for a violation of the Declaration

## ARTICLE XIII
## INSURANCE AND CASUALTY LOSSES

Section 1. Insurance. The Association's Board of Directors or its duly authorized agent shall have the authority, but not the obligation, to obtain insurance for all insurable improvements located on the Common Property or property required to be maintained by the Association under this Declaration (NOT on any Lot which is the Owner's responsibility), including coverage for (i) 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, and (ii) comprehensive general liability insurance covering all of the Common Property. The Boards shall also have the authority, but not the obligation to obtain director's and officer's liability insurance, said insurance to cover the members and officers of the Board of Directors; and the members of the Architectural Committee as duly appointed under the provisions of Article VI, insuring the same against any negligence or nonfeasance. Premiums for all insurance shall be common expenses of the Association. The policies may contain a reasonable deductible and the amount thereof shall be added to 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 benefited parties. Such insurance shall be governed by the provisions hereinafter set forth.

(c) All policies shall be written with a company authorized to do business in Georgia.

(d) 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.

(e) 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.

(f) 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 Development is located.

Section 2 Damage and Destruction - Town Homes. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Portico, Townhome, Patio or Easement Area 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. In the event of noncompliance with this provision, the Board of Directors shall have all enforcement powers specified in this Declaration.

Section 3. 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 persons who are responsible hereunder, or under any declaration or contact requiring the Association to obtain such insurance, for maintenance of the damaged or destroyed property.

Section 4. Additional Insurance. In addition to coverage described hereinabove, the Association shall obtain such additional amounts and types of insurance as may be required from time to time by either the Veterans Administration or the Federal Housing Administration, their successors and assigns, for similar type residential subdivision committee.

The Association shall have the authority, but not the obligation, to obtain and maintain a blanket fidelity bond for all officers, directors, and employees of the Association and all other persons who handle, or are responsible for, funds of or administered by the Association. If the Association engages a management agent who has responsibility for handling or administering funds of the Association, the management agent shall be required to maintain fidelity bond coverage for its officers, employees and agents handling or administering the funds of the Association. Such fidelity bonds shall name the Association as an obligee and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the management agent at any time during the period of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to three (3) months' aggregate assessments on all Townhomes plus reserve funds. The bonds shall contain waivers by the issuer of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. The bonds shall provide that they may not be canceled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days' prior notice to the Association.

Section 5. Townhomes. The owner of each Townhome shall obtain and maintain in effect at all times a master multi-peril policy of property insurance covering all insurable portions of such Townhome, and the Stoop, Patio and any Portico which is annexed to such Townhome, on a replacement cost basis in an amount of not less than one hundred percent (100%) of the insurable value, based upon replacement cost, of the same.

Section 6. Construction and Sale Period. Notwithstanding any provisions contained in this Declaration, the by-laws, Articles of Incorporation, use restrictions, rules and regulations, Design Standards, and any amendments thereto, until Declarant's right unilaterally to subject property to this Declaration as provided herein terminates, it shall be expressly permissible for Declarant to maintain and carry on, upon such portion of the Development as Declarant may deem necessary, such facilities and activities as may reasonably be required by the Declarant and

such builder in the development, for construction and sales activities related to the property subject to this Declaration, including, but not without limitation, the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the development; the right to tie into any portion of the Development, with driveways, parking areas and walkways; the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, natural gas, cable television, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Development; the right to maintain sales signs and project signs on individual Lots or Townhomes, within the right-of-way of any road, and at the entrance(s) of the Development; and the right to construct and operate business offices, signs, construction trailers, material storage areas, model Townhomes, off-street parking areas, and sales offices. Declarant may use Townhomes or offices owned or leased by Declarant as model Townhomes and sales offices. Rights exercised pursuant to this 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 any damage at its sole expense.

[SIGNATURES ON NEXT PAGE]

**IN WITNESS WHEREOF**, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 6th day of June, 2007.

Sworn to and subscribed before me,
this 6th day of June, 2007

Deborah A. Baker
NOTARY PUBLIC

DECLARANT:

W & H COMMUNITIES, LLC

William H Harper (Seal)
By: William H. Harper, Jr.
Title: member

DEBORAH A. BAKER NOTARY PUBLIC COBB COUNTY GEORGIA EXPIRES MAY 18, 2010

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PROPERTY**

Deed Book 14501 Pg 481
Jay C. Stephenson
Clerk of Superior Court Cobb Cty. Ga.

## EXHIBIT "B"

### Townhome Boundaries

Notwithstanding the depiction of the boundaries of any Townhome on the applicable Plat the boundaries of each Townhome shall be as follows: The side boundary of each Townhome shall be a line consistent with and along the center of all firewalls separating a Townhome from another Townhome. The side boundary of each Townhome which does not separate a Townhome from another Townhome, shall be the line consistent with and along the outer, exterior surface of the outside wall of such Townhome. The front and rear boundary of each Townhome shall be as set forth on the plat. All of the area within the boundaries of each of the Townhomes, as herein described, and as shown and depicted on the applicable Plat, shall for all purposes constitute real property which may be owned in fee simple, subject to the terms, provisions, liens, charges, covenants, easements and restrictions of this Declaration.

Deed Book 14580 Pg 3925
Filed and Recorded Feb-14-2008 02:39pm
2008-0019694

Jay C. Stephenson
Clerk of Superior Court Cobb Cty. Ga.

(SPACE ABOVE USED FOR RECORDING INFORMATION)

RETURN TO: SSS
MOORE INGRAM JOHNSON & STEELE, LLP
192 ANDERSON STREET
MARIETTA, GA 30060
(770) 429-1499

14

CROSS REFERENCE: Deed Book 14501, Page 439

**AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CHIMNEY HILL TOWNHOMES**

STATE OF GEORGIA
COUNTY OF COBB

This Amendment is made on the date hereinafter set forth by W & H COMMUNITIES, LLC (hereinafter collectively referred to as "Declarant");

WITNESSETH:

WHEREAS, Declarant recorded that certain Declaration of Covenants, Conditions and Restrictions for Chimney Hill Townhomes on June 12, 2007 in Deed Book 14501, Page 439, Superior Court Records, Cobb County, Georgia (said Declaration as amended being hereinafter referred to as the "Declaration"); and

WHEREAS, pursuant to authority granted in Article IX, Section 2, Declarant desires to amend the Declaration as set forth herein.

NOW, THEREFORE, for and in consideration of the premises, said Declaration is hereby amended as follows:

1.

When the Declaration was originally recorded, Exhibit "A" to the Declaration was inadvertently omitted. Therefore, the Declaration is amended to attach a new Exhibit "A" attached hereto as Exhibit "1" and made a part hereof by reference, which references the most recently recorded plat of survey for Chimney Hill Townhomes.

2.

The first "WHEREAS" paragraph on Page 1 of the Declaration is deleted and replaced with a new first "WHEREAS" paragraph to read as follows:

Declarant is the owner of certain real property located in Land Lot 511, 512, 589 and 590 of the 18th District, 2nd Section, Cobb County, Georgia, which is more particularly described on Exhibit "A" attached hereto and made a part hereof by reference.

3.

This Amendment shall take effect as if same had been a part of the Declaration ab initio.

4.

Except as otherwise specifically amended herein, said Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, Declarant has caused this Amendment to be executed by their respective duly authorized representatives on the 11th day of February, 2008.

DECLARANT:
W & H COMMUNITIES, LLC

_____(SEAL)
BY: William H. Harper, Jr.
TITLE: manager

Signed, sealed and delivered
in the presence of:

_____
WITNESS

_____
NOTARY PUBLIC

REBEKAH E. SOBEL
MY COMMISSION EXPIRES
JAN
COBB CO., GEORGIA
NOTARY PUBLIC

Deed Book 14580 Pg 3927
Jay C. Stephenson
Clerk of Superior Court Cobb Cty. Ga.

EXHIBIT "A"

**LEGAL DESCRIPTION OF PROPERTY**

All that tract or parcel of land lying and being in Land Lots 511, 512, 589 and 590 of the 18th District, 2nd Section, Cobb County, Georgia, more particularly described on that certain Final Plat for Chimney Hill Townhomes, dated April 23, 2007, last revision dated January 28, 2008, prepared by Betterton Surveying & Design, Inc., Robert B. Betterton, Georgia Registered Land Surveyor Number 2496, recorded January 31, 2008 in Plat Book 268, Page 56, Records of Cobb County, Georgia.

Deed Book 14603 Pg 1723
Filed and Recorded Apr-28-2008 04:10pm
2008-0058835

Jay C. Stephenson
Clerk of Superior Court Cobb Cty. Ga.

ABOVE SPACE FOR RECORDING PURPOSES ONLY

RETURN TO:
Moore Ingram Johnson & Steele, LLP/SSS
192 Anderson Street
Marietta, GA 30060
(770) 429-1499

CROSS REFERENCE: Deed Book 14501, Page 439

**AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CHIMNEY HILL TOWNHOMES**

STATE OF GEORGIA
COUNTY OF COBB

This **AMENDMENT** made on the 22nd day of April, 2008, by W & H COMMUNITIES, LLC (hereinafter referred to as "Declarant").

WITNESSETH:

**WHEREAS**, that certain Declaration of Covenants, Conditions and Restrictions for Chimney Hill Townhomes was recorded in Deed Book 14501, Page 439, Superior Court Records, Cobb County, Georgia (said Declaration as amended being hereinafter referred to as the "Declaration"); and

**WHEREAS,** pursuant to Article XI, Section 11.15 of the Declaration, Declarant desires to amend the Declaration as set forth herein.

**NOW, THEREFORE,** for and in consideration of the premises, said Declaration is hereby amended as follows:

Deed Book 14603 Pg 1724
Jay C. Stephenson
Clerk of Superior Court Cobb Cty. Ga.

1.

Article XI, Section 15 Leasing, shall be deleted and replaced with a new Section 15 to read as follows:

Section 15. Leasing Units. All Units shall be offered "for sale" by the builder of the Townhomes. Thereafter, the leasing of any Townhomes in the community shall be limited to 1-year minimum leases.

2.

Except as herein amended, the Declaration shall remain in full force and effect.

**IN WITNESS WHEREOF.** the Declarant has caused this amendment to be executed on the 22ND day of April, 2008.

W & H COMMUNITIES, LLC

_____(SEAL)
BY:: Willard H. Harper, Jr.
TITLE: member

Signed, sealed and delivered
in the presence of:

WITNESS

NOTARY PUBLIC

REBECCA H. SOBEL
NOTARY PUBLIC
COBB COUNTY, GEORGIA
MY COMMISSION EXPIRES
JAN 3 2010

Deed Book 14610 Pg 1499
Filed and Recorded May-20-2008 03:48pm
2008-0069845

Jay C. Stephenson
Clerk of Superior Court Cobb Cty. Ga.

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RETURN TO:
Moore Ingram Johnson & Steele, LLP/SSS
192 Anderson Street
Marietta, GA 30060
(770) 429-1499

CROSS REFERENCE: Deed Book 14501, Page 439

**AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CHIMNEY HILL TOWNHOMES**

STATE OF GEORGIA
COUNTY OF COBB

This **AMENDMENT** made on the 22ND day of April, 2008, by W & H COMMUNITIES, LLC (hereinafter referred to as "Declarant").

WITNESSETH:

**WHEREAS,** that certain Declaration of Covenants, Conditions and Restrictions for Chimney Hill Townhomes was recorded in Deed Book 14501, Page 439, Superior Court Records, Cobb County, Georgia (said Declaration as amended being hereinafter referred to as the "Declaration"); and

**WHEREAS,** pursuant to Article XI, Section 11.15 of the Declaration, Declarant desires to amend the Declaration as set forth herein.

**NOW, THEREFORE,** for and in consideration of the premises, said Declaration is hereby amended as follows:

1.

Article XI, Section 15 Leasing, shall be deleted and replaced with a new Section 15 to read as follows:

Section 15. Leasing Units. All Units shall be offered "for sale" by the builder of the Townhomes. Thereafter, the leasing of any Townhomes in the community shall be limited to 1-year minimum leases.

2.

Except as herein amended, the Declaration shall remain in full force and effect.

**IN WITNESS WHEREOF**, the Declarant has caused this amendment to be executed on the 22 day of April, 2008.

W & H COMMUNITIES, LLC

_____(SEAL)
BY:: William H. Harper, JR.
TITLE: manager

Signed, sealed and delivered
in the presence of:

WITNESS

NOTARY PUBLIC

REBEKAH E. SOBEL
NOTARY PUBLIC
COBB CO., GEORGIA
MY COMMISSION EXPIRES