

DECLARATION OF COVENANTS AND RESTRICTIONS

FOR

SIMS VALLEY

Big Ridge Partners, LLC., a Florida limited liability company, herein referred to as "Declarant," hereby creates a planned community known as SIMS VALLEY SUBDIVISION, described herein.

WITNESSETH

Declarant hereby declares that all of the Property described in Exhibit "A" attached hereto and incorporated herein by reference shall be held, transferred, sold, conveyed, encumbered, leased, used, improved and occupied subject to the provisions of Chapter 47 F of the North Carolina General Statutes and subject to the following covenants, conditions, restrictions and easements all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property, as defined hereinbelow. These covenants, conditions, restrictions and easements shall run with the land and be binding upon all persons having or acquiring any right, title or interest in the above-described property or any part thereof, and shall inure to the benefit of each Owner thereof.

I. DEFINITIONS

For the purpose of this Declaration the following definitions shall control:

Section 1. "Articles of Incorporation" shall mean the Articles of Incorporation of SIMS VALLEY HOMEOWNERS ASSOCIATION, INC., and all exhibits which are attached thereto and made a part thereof, and shall include such amendments, if any, as may be adopted from time to time pursuant to the terms thereof.

Section 2. "Association" shall mean SIMS VALLEY HOMEOWNERS ASSOCIATION, INC., a North Carolina non-profit corporation.

Section 3. "Bylaws" shall mean the Bylaws of SIMS VALLEY HOMEOWNERS ASSOCIATION, INC., and all exhibits which are attached thereto and made a part thereof, and shall include such amendments, if any, as may be adopted from time to time pursuant to the terms thereof. Said Bylaws are attached as Exhibit "B" hereto and incorporated herein by reference.

Section 4. "Common Areas" shall mean all areas identified as such on the Plats, all water systems serving the Lots, the Roads, Common Driveways, the Entrances, and any other parcels of the Property which may from time to time be conveyed by the Declarant to the Association for the benefit of its members.

Section 5. "Common Driveways" shall mean that portion of any driveway serving more than one Lot.

Section 6. "Declarant Control Period" shall mean the period during which Declarant is a Class B Member, and shall terminate in accordance with Article IV, Section 3. hereof.

Section 7. "Declaration" shall mean this instrument, together with those exhibits which are attached hereto and made a part hereof and shall include such amendments, if any, as may be adopted from time to time pursuant to the terms hereof.

Section 8. "Entrances" shall means the landscaped entrances to the Property.

Section 9. "Lot" shall mean any parcel of land so designated on the Plats.

Section 10. "Member" shall mean each Owner of a Lot.

Section 11. "Owner" shall mean the record owner, whether one or more persons or entities, of fee simple title to any Lot.

Section 12. "Plats" shall mean the plats of the Property which are on record in the Jackson County Registry in Plat Cabinet 15, Slides 499 and 500, Plat Cabinet 15, Slides 501 and 502 and Plat Cabinet 15, Slide 503, and the plat of any additional real property annexed in accordance with Article VIII of this Declaration.

Section 13. "Property" shall mean that certain real property described on Exhibit "A" hereto and any additional real property annexed in accordance with Article VIII of this Declaration.

Section 14. "Roads" shall mean all roads shown on the Plats or the plat of any additional real property annexed in accordance with Article VIII of this Declaration

Section 15. "Single-family dwelling" shall mean a residential dwelling for occupancy by one or more persons, each related to the other by blood, marriage, or legal adoption or, alternatively, a group of not more than four (4) persons not so related who shall maintain a common household in such dwelling.

Section 16. "Supplemental Declaration" means any document made and executed by Declarant which annexes any additional lands as Property and submits same to the terms and provisions of this Declaration or any amendment hereto.

II. PROPERTY SUBJECT TO THIS DECLARATION: ADDITIONS THERETO

Section 1. Property Subject to this Declaration. The Property described on Exhibit "A", attached hereto and incorporated herein, and any additional real property annexed in accordance with Article VIII of this Declaration, is the property hereby declared to be held, transferred, sold, conveyed, encumbered, leased, used, improved and occupied subject to this Declaration.

III. COMMON AREAS

Section 1. Declarant's Authority to Retain Rights in the Common Areas. Declarant shall retain as to the Common Areas such rights thereto including but not limited to the use thereof and the right to improve, modify and maintain as is necessary in Declarant's sole opinion for the possible development and sale of other adjacent lands, rights-of-way for ingress and egress between said lands and the public road, and use and enjoyment thereof by Declarant, its successors and assigns. This right shall survive the sale of all Lots in the Property

Section 2. Owner's Right and Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in the Common Areas in common with all other Owners, subject to:

- (a) All rules and regulations governing the use and enjoyment of the Road and Common Areas by the Association;
- (b) The right of the Declarant and the Association to establish easements over the Common Areas for service to or in favor of any private or governmental entities for the installation and maintenance of electrical and telephone conduit and lines, gas pipes, sewer lines, water pipes, cable television lines or any other utility services serving any Lots within the Property;
- (c) All provisions of this Declaration not enumerated above, and all restrictions and provisions set forth on the plats of the Property.

Section 3. Declarant's Right to Maintain. The non-exclusive right to use the Common Areas shall be an appurtenance to each Lot, subject to the reserved right of Declarant and its assigns to use, maintain, improve, and/or replace the Common Areas, and to install, maintain and replace public and private utilities within the Common areas for the benefit of the Property and of such other lands as may be from time to time, be designated by Declarant.

IV. THE ASSOCIATION, ADMINISTRATION, MAINTENANCE AND IMPROVING OF THE COMMON AREAS; FINANCIAL RESPONSIBILITY OF OWNERS THEREFOR; AGREEMENT FOR ASSESSMENTS AND ENFORCEMENT THEREOF.

Section 1. General. The Association is a North Carolina non-profit corporation organized to further and promote the common interests of the Owners. The Association shall

have such powers as are set forth in Section 47 F-3-102 of the General Statutes and in its Articles and Bylaws. The Association shall be responsible for the administration, maintenance, and improvement of the Common Areas.

Section 2. Membership. Every Owner shall be a Member of the Association. The Declarant shall be a Member of the Association. . Membership in the Association shall consist exclusively of the Owners. The Association shall have the powers enumerated in Section 47F-3-102 of the General Statutes. The management of the Association shall be by the Board of Directors, pursuant to Section 47F-3-103 of the General Statutes

Section 3. Classes of Members. Class "A" members shall be all Owners of Lots in the Property, with the exception of the Declarant. The Class "B" member shall be the Declarant. Declarant shall cease to be a Class B member upon the sooner to occur of (i) the sale of 90% of the Lots, or (ii) five (5) years from date of recordation of this Declaration in the Jackson County Registry.

Section 4. Votes. Each Class "A" member shall be entitled to one (1) vote for each Lot it owns. The Class "B" member shall have seven (7) votes for each Lot it owns. If a Lot is owned by other than one natural person, the Owner(s) shall designate a voting member in writing to the Association. Voting shall be in person or by mail ballot. Voting by proxy shall be permitted.

Section 5. Board of Directors. The affairs of the Association shall be governed by the Board of Directors. Initially, the Board will be composed of three (3) persons designated by the Declarant, one of whom shall be an Owner. The initial directors shall be replaced as provided for in the Articles of Incorporation and Bylaws of the Association but in no event later than the date of termination of the Declarant Control Period.

Section 6. Administration, Maintenance and Improvements. The Association shall be responsible for the administration, maintenance and improvement of the Common Areas including, but not limited to, maintenance, repair and replacement of all landscaping and improvements located within the Common Areas, maintaining the Roads and Common Driveways (but not including removal of snow and ice), Entrances, limited access gates and water systems. The Association shall maintain all common wells providing water to more than one Lot. The Association shall bear all expenses associated with the above responsibilities including, but not limited to, costs of all persons employed by the Association.

Section 7. Financial Responsibility of Owners. The Owners are responsible for providing funds necessary to the Association to carry out the above purposes. The Association shall prepare an annual budget, and shall assess each Owner as provided herein for its pro rata share of such expenses.

Section 8. Assessments; Personal Obligations of Owners; Creation of Lien. Each Owner

of any Lot, with the exception of Declarant, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant (which covenant shall run with the land and be binding on every Owner) and agree to pay to the Association:

- (1) "Annual Assessments" for administration and maintenance of the Common Areas, employee costs and administrative costs of the Association, and "Special Assessments" for capital improvements to the Common Areas;
- (2) The following fees and deposits shall be due prior to the commencement of any construction on a Lot:
 - (a) a water system "tap-in" fee of \$2,000.00;
 - (b) an architectural review fee of \$1,000.00;
 - (c) a Construction Compliance Deposit in the amount of \$2,500.00, the purpose of which shall be (i) to insure that the construction of any improvements shall be in accordance with the plans therefor approved by the Architectural Control Committee, and (ii) to reimburse the Association for the cost of repairing any damage to the Common Areas caused by the Owner during the course of constructions of said improvements. At the time of completion of the improvements the Association shall return any unused portion of the Construction Compliance Deposit.

Section 9. Rate of Assessment. All annual and special assessments shall be fixed at a uniform rate for all Lots. The Board of Directors shall fix the amount of the annual assessment at least 30 days in advance of each annual assessment period. Written notice of annual and special assessments 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. Provided, however, that no annual or special assessment shall be imposed for the period from the date of recording this Declaration through May 31, 2007. Provided further that no special assessment shall be imposed during the Declarant Control Period unless approved by not less than 67% of the Class A Members.

Section 10. Budget. The Board of Directors shall adopt a proposed annual budget for the Property and, within 30 days thereof shall provide to all Owners a summary thereof and notice of the meeting to consider the ratification of the budget, including a statement that the budget may be ratified without a quorum. The meeting shall be held not less than 10 nor more than 60 days after mailing of the summary and notice. The budget shall be deemed ratified unless at that meeting a majority of Members rejects the budget.

Section 11. Effect of Non-Payment of Assessments; Remedies of the Association; Personal Obligation of Owner; the Lien.

- A. Any assessment levied against a Lot not paid within thirty (30) days after the due date shall constitute a lien on that Lot when a claim of lien is filed of record in the office of the Clerk of the Superior Court in the manner provided in the North Carolina General Statutes, Section 47F-3-116. The Association may foreclose the lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. All fees, charges, late charges, fines, interest and other charges are enforceable as assessments. The Association shall have any other remedy available under the law.
- B. If any assessment against any Lot is not paid by the due date, such assessment shall be delinquent and shall bear interest from the due date at the rate of eighteen per cent (18%) per annum, or the maximum interest rate allowed by law, whichever is higher.
- C. If any delinquent assessment is not paid within thirty (30) days from the date of the notice of assessment and is placed in the hands of an attorney for collection there shall be added to the amount due all costs of collection including reasonable attorney's fees.

Section 12. Owner May Not Escape Liability by Non-Use of Road, and/or Common Areas. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of his Lot.

Section 13. Suspension of Owner's Rights while Delinquent. A hearing shall be held before the Board of Directors or the Association to determine if any Owner should be fined or if privileges or services should be suspended. The Owner charged shall be given notice of the charge, opportunity to be heard and to present evidence, and notice of the decision.

V. RESTRICTIONS ON USE

Section 1. Use of Lots Restricted to Residential Purposes. Except as otherwise herein stated, no Lot shall be used except for one Single-family dwelling, a guest house, and out buildings approved by the Architectural Control Committee. There shall be no commercial activity on any Lot. Said dwelling must be constructed prior to the construction of a guest house and/or out buildings.

Section 2. Site Location. Residences and all additional buildings and improvements shall be reasonably located on each Lot in a manner which shall not encroach on the privacy of the adjacent Lots. Such locations must be approved by the Architectural Control Committee, which shall be the sole determiner of the above criteria.

Section 3. Minimum Square Footage Requirement. With the exception of Lots 8 – 11 and 28 - 33 (the "Cottage Lots"), which shall be not less than 1200 square feet, no Single-family

dwelling shall have less than 1600 square feet of finished, enclosed, heatable living space. In the event that said dwelling shall have more than one story totally above ground level, the first story totally above ground level shall contain at least 1,200 square feet of finished, enclosed, heatable living space. The minimum dwelling size may be reduced by the Committee under the variance powers provided for herein where it appears that a dwelling of reduced area would be more suitable for a particular Lot and not be detrimental to adjoining Lots.

Section 4. Completion of Construction. Construction of improvements, once commenced, shall be completed within eighteen (18) months. Improvements not so completed or upon cessation of construction for twelve (12) consecutive months or construction which has been partially or totally destroyed and not rebuilt or cleaned away so as to leave a neat and tidy appearance, within twelve (12) months shall be deemed a nuisance.

Section 5. Maintenance of Lots and Improvements. All Lots, whether occupied or unoccupied, and all improvements placed thereon, to include landscaping, shall at all times be maintained in such a manner as to prevent their becoming unsightly, unsanitary, or a hazard to health. If not so maintained to a standard established by the Association, in its sole discretion, the Association shall have the right to rectify such offensive situations, and the costs of such undertaking shall be a special assessment against the Owner and the Lot. Neither the Association nor any of its agents, employees or contractors shall be liable for any damage which may result from its actions to so rectify any offensive situation.

Section 6. Burning of Garbage, Trash or Rubbish Prohibited. No Owner shall burn any trash, garbage or refuse on the Property.

Section 7. Storage of Garbage, Trash or Rubbish. No Owner shall accumulate on his Lot any junk vehicles, or any litter or garbage except in receptacles provided by Owner for such purposes. All rubbish, garbage, trash receptacles and fuel storage tanks shall be buried for concealment or covered in a manner so as not to be visible from any Road or from adjacent Lots.

Section 8. Portable Structures Prohibited. No travel trailer, mobile home, modular home, relocatable dwelling, tent, lean-to or other temporary structure may be placed or erected on any Lot except that temporary structures, trailers or the like may be permitted by the Architectural Control Committee when used in the process of erection of improvements thereto.

Section 9. Resubdivision of a Lot. No Lot shall be subdivided to create an additional Lot, and no common boundary between any two Lots shall be moved except either to eliminate a Lot or to subdivide a Lot and combine the subdivided parcels thereof with existing adjoining Lots. In the event that a Lot is eliminated, said Lot or its subdivided parcels shall become a part of the adjoining Lot or Lots, and said revised Lot or Lots shall continue to be subject to these covenants, the result being a reduction of the total number of Lots.

Section 10. Animals. No animals other than those usually considered to be household

pets shall be kept or maintained on any Lot, and such pets shall be kept reasonably confined so as to not become a nuisance.

Section 11. Signs. No signs other than the Owner's name or identification of the Owner's property or realtor's signs advertising the Lot for sale shall be permitted on any Lot; provided, however, that the Architectural Control Committee shall have the right to determine the kind, size and location of all permitted signs. This provision shall not apply to Declarant.

Section 12. Camping Prohibited. Overnight camping on any Lot is prohibited.

Section 13. Recreational Vehicles, Boats and Trailers. No recreational vehicles, boats and boat trailers shall be permitted on Lots unless stored in an enclosed garage or basement; provided however that recreational vehicles, boats and boat trailers may be allowed on a temporary basis with prior approval of the Association.

Section 14. Motorcycles. No motorcycle, motor bicycle, "dirt bike" or other such vehicle with an internal combustion engine shall be operated on any Lot or roadway on the Property. (Since one of its purposes is to limit noise, this restriction shall be broadly construed to include all such vehicles, notwithstanding the number of wheels). However, electrically powered or properly muffled gas golf carts shall be permitted.

Section 15. Nuisance. No nuisance, and no noxious or offensive activities or noise shall be permitted.

Section 16. Water Impoundment. No impounding of water on any Lot shall be permitted, unless approved by the Architectural Control Committee.

Section 18. Driveways. The location of all driveways on any Lot shall be approved by Declarant during the Declarant Control Period and the Architectural Control Committee thereafter.

Section 19. Fences. No fence or fencing-type barrier of any kind shall be placed, erected, allowed, or maintained upon any portion of a Lot without the prior written consent of the Architectural Control Committee.

Section 20. Exterior Lighting. All exterior lighting must be approved by the Architectural Control Committee. Outdoor lighting which creates a nuisance with regard to occupants of adjacent Lots is prohibited.

VI. EASEMENTS

Section 1. Reservations of Easements. An easement over all Common Areas for

maintenance and improvement thereof and a ten (10) foot wide strip running along the inside of all Lot lines for the installation, maintenance and operation of utilities including radio and television transmission cables and the right of ingress and egress to the extent reasonably necessary to exercise such easements are reserved to Declarant, its successors and assigns.

Section 2. Use of and Maintenance by Owners. The areas of any Lots affected by the easements reserved herein shall be maintained continuously by the Owner of such Lot with the exception of the Common Areas, which shall be maintained by the Association. No structures, plantings or other materials shall be placed or permitted to remain or other activities undertaken thereon which may damage or interfere with the use of said easements for the purposes herein set forth. Improvements within such areas shall be maintained by the Owner except improvements for which a public authority or utility company is responsible.

Section 3. Limitation on Liability for Use of Easement. No Owner shall have any claim or cause of action against Declarant or its licensees arising out of exercise or non-exercise of any easement reserved hereunder or shown on the Plat.

Section 4. Water. Water consumption shall be for normal domestic purposes only. In the event of water shortages due to drought or other reasons, the Association shall have the right to impose restrictive rules regulating water consumption, and shall have the right to enforce such rules by curtailing service to any Lot on which excessive water consumption occurs.

VII. CONTROL OF IMPROVEMENTS: THE ARCHITECTURAL CONTROL COMMITTEE

There is hereby created an Architectural Control Committee which shall perform the duties required of it by this Declaration.

Section 1. Improvements Prohibited Without Approval. No building, fence, wall, satellite dish antenna, exterior lighting or other structure shall be commenced, erected, maintained or placed upon any Lot nor shall any exterior change or alteration to any residence or improvement thereon be made upon any Lot until the plans and specifications showing the nature, kind, shape, height, materials, square footage of finished, enclosed, heatable living space, and location of said improvement or alteration shall have been submitted to the Architectural Control Committee in the manner and form prescribed by it and approved by it. No utility lines other than underground lines shall be placed on or above any Lot. No tree greater than thirty-seven and sixty-eight hundredths (37.68) inches in circumference (12 inches in diameter) measured four (4) feet above the ground (except for trees located at the primary construction site) shall be removed without the written approval of the Committee.

Section 2. Other Approvals Required by Architectural Control Committee. Where this Declaration requires the approval of the Architectural Control Committee in matters other than

those set forth in Section 1 of this Article, requests for such approval shall be submitted in writing to the Committee in the manner and form prescribed by it. The application shall show in sufficient detail those factors necessary for the Committee, in its sole discretion, to render a decision on the request.

Section 3. Grounds for Disapproval. The Committee may disapprove any applications:

- (a) If, in the judgment of a majority of the Committee reasonably exercised, the proposed request fails to meet the criteria set forth in this Declaration or the Architectural Guidelines and Procedures promulgated from time to time by the Committee;
- (b) Because of the reasonable dissatisfaction of the Committee with grading plans, location of the proposed improvements on a Lot, finished ground elevation, color scheme, finish, design proportions, architecture, shape, height, or style of the proposed improvements, the materials used therein, the kind, pitch, or type of roof proposed to be placed thereon;
- (c) If, in the judgment of a majority of the Committee reasonably exercised, the proposed improvements would not be harmonious with the improvements erected on other Lots.

Section 4. Rules and Regulations. The Committee shall, from time to time, adopt written Guidelines and Procedures of general application which shall include, among other things, provisions for the form, cost and content of applications; required number of copies of plans and specifications; provisions for notice of approval or disapproval, including a thirty (30) day time period after approval becomes automatic by reason of failure to disapprove.

Section 5. Variances. The Committee may grant reasonable variances or adjustments from the provisions of this Declaration where literal application thereof results in unnecessary hardship and if the granting thereof will not be materially detrimental or injurious to Owners of other Lots.

Section 6. Certification of Compliance. At any time after the commencement but before the completion of construction of a Lot, the Architectural Control Committee may require that the Owner of said Lot submit to the Committee, on a form or in a format provided or prescribed by the Committee, a certificate and/or affidavit signed by the Owner, the general contractor or a licensed surveyor, as appropriate, stating that the improvement on said Lot does not deviate from the plans and specifications and/or the site location previously approved by the Committee and/or does not violate any setback or other provision of this Declaration, as specified by the Committee.

The Committee shall have the power to require that work on an improvement be discontinued until the aforesaid certificate is submitted to and approved by the Committee. It is the purpose of this Section 6 to empower the Committee to enforce the provisions of this Declaration in a timely manner so as to mitigate damages to Owners and to the Association.

Section 7. Liability. Notwithstanding the approval by the Architectural Control Committee of

plans and specifications or its inspection of the work in progress, neither it, Declarant, the Association, nor any person acting on behalf of any of them shall be responsible in any way for any defects in any plans or specifications or other material submitted to the Architectural Control Committee, nor for any defects in any work done pursuant thereto. Each person submitting such plans for specification shall be solely responsible for the sufficiency thereof and the adequacy of improvements constructed pursuant thereto.

Section 8. Appeals. Any applicant shall have the right to appeal to the Board of Directors of the Association any decision of the Architectural Control Committee within thirty (30) days after entry of such decision.

Section 9. Certificate of Completion. Upon completion of the improvement of a Lot in accordance with the plans and specifications approved by the Committee, the Committee shall issue a Certificate of Completion and shall refund such balance of the deposit required by this Article after deducting the costs, if any, of enforcing the provisions of the Declaration.

Section 10. Committee Membership. The Committee shall be composed of three (3) Members, which shall be appointed by the Declarant and which shall include one Owner and one architect or other design professional. If no architect or other design professional is willing to serve on the Committee, Declarant shall appoint the third committee member. Committee members shall be subject to removal by Declarant, provided if the Owner member or architect member is removed, another Owner or architect, as the case may be, shall be appointed in their place. The power to appoint or remove Committee members shall be transferred to the Association upon the date of termination of the Declarant Control Period.

VIII. ANNEXATION AND SUBMISSION OF ADDITIONAL PROPERTIES TO THE DECLARATION

Section 1. Property to be Annexed. Declarant may in its sole discretion annex additional real property and submit it to the terms and conditions of this Declaration.

Section 2. Manner of Annexation. Declarant shall effect such annexation by recording a Plat of the real property to be annexed and by recording a Supplemental Declaration which shall:

- (a) Describe the real property being annexed and designate the permissible use thereof;
- (b) Set forth any new or modified restrictions or covenants which may be applicable to such annexed property;
- (c) Declare that such annexed property shall be held, transferred, sold, conveyed, encumbered, leased, used, occupied and improved subject to the provisions of this Declaration.

Section 3. Results of Annexation. Upon the recording of such Plat and Supplemental Declaration, the annexed area shall become a part of the Property subject to all provisions of this

Declaration as supplemented or modified by said Supplemental Declaration.

Section 4. Revision of Plats by Declarant. Notwithstanding the provisions and conditions herein contained, Declarant intends to prepare and record subdivision plats and does hereby reserve unto itself, its successors and assigns, the right to relocate, open, or close streets or roads shown on said plats, and to revise, resubdivide and change the size, shape, dimensions and locations of unsold Lots. The covenants, conditions, restrictions and reservations hereby imposed shall be applicable to the resulting Lots in lieu of the Lots as originally shown on said plat prior to such revision, relocation or change. However, Lots sold prior to such revision, relocation or change shall not be deprived of that portion of the street or streets on which it bounds nor of access to such Lot from the Road in the Development.

IX. GENERAL PROVISIONS

Section 1. Covenants, Conditions, Restrictions and Easements Run With Land. All covenants, conditions, restrictions and easements contained in this Declaration shall constitute covenants running with land.

Section 2. Grantee's Acceptance. Each Owner of any Lot, by acceptance of title thereto, or by the execution of a contract for the purchase thereof, shall accept such title or contract subject to each and all of the provisions of this Declaration and to the jurisdiction, rights, powers, privileges, and immunities of Declarant and of the Association. Such Owner or contracting party, for himself, his heirs, assigns, and successors, covenants, consents and agrees to and with the Declarant, the Association and the Owner of each other Lot to keep, observe, comply, and perform the covenants, conditions and restrictions contained in this Declaration.

Section 3. Interpretation. The Board of Directors of the Association shall have the right to determine all questions arising in connection with this Declaration and to construe and interpret its provisions, and its determination, construction or interpretation shall be final and binding. In all cases, the provisions of this Declaration shall be given the interpretation or construction that will best tend toward the consummation of the general plan of this Declaration.

Section 4. Authorized Action. All actions which the Association is allowed to take under this instrument shall be authorized actions of the Association if approved by the Board of Directors of the Association in the manner provided for in the Bylaws of the Association, unless the terms of this Declaration provide otherwise.

Section 5. Assignment. The Declarant reserves the right to assign any and all of its rights, powers, obligation and privileges under this instrument to any other corporation, Association or person at any time.

X. REMEDIES

Section 1. Enforcement. The Declarant, Association and each person to whose benefit this Declaration inures, may proceed at law or in equity to prevent the occurrence, continuance, or violation of any provisions of this Declaration, and the Court in such action may award the successful party reasonable expenses in prosecuting such action, including reasonable attorney's fees.

Section 2. Cumulative Rights. Remedies specified herein are cumulative and any specifications of them shall not be taken to preclude any aggrieved party's resort to any other remedy at law or in equity.

No delay or failure on the part of an aggrieved party to invoke an available remedy in respect of a violation of any provisions of this Declaration shall be held to be a waiver by that party of any right available to him upon the recurrence or continuance of said violation or the occurrence of a different violation.

Section 3. Effect of Waiver of Violation. No waiver of a breach or violation of any of the covenants, conditions, restrictions and easements in this Declaration shall be construed as a waiver of any succeeding breach of the same covenant, conditions, restriction and waiver.

XI. SEVERABILITY

Each provision of this Declaration is hereby declared to be independent of and severable from every other provision hereof. If any provision hereof shall be held by a court of competent jurisdiction to be invalid, or unenforceable, all remaining provisions shall continue unimpaired and in full force and effect.

XII. TERM AND AMENDMENT

The provisions of this Declaration shall affect and run with the land and shall exist and be binding upon all parties claiming an interest in the Property until January 1, 2027, A.D., after which time they shall be automatically extended for successive periods of ten (10) years unless affirmative vote of a majority of the voting Members of the Association decides to the contrary.

During the Declarant Control Period this Declaration may be amended by the Declarant without joinder of the Owners or the Association except that the Declarant shall not amend Article V, Restrictions on Use, without approval of 67% of the Owners of all Lots in the development entitled to vote, as set forth hereinbelow. After the termination of the Declarant Control Period, this Declaration may be amended by a vote of 67% of the Owners of all Lots in the development entitled to vote and by the subsequent recordation of an amendment to this Declaration duly executed by (a) the requisite number of such Owners required to effect such amendment, or (b) by the Association, in which latter case, such amendment shall have attached to it a copy of the resolution of the Board attesting to the affirmative action of the requisite

number of such Owners to effect such amendment, certified by the Secretary of Association.

XIII. GENDER

Wherever the context so requires, the use of any gender shall be deemed to include all genders and the use of the singular shall include the plural and the plural shall include the singular.

IN WITNESS WHEREOF, Declarant has caused these presents to be executed by Brookwood Properties, Inc., its managing member, this the 27th day of October, 2006.

BROOKWOOD PROPERTIES, INC., a
Florida corporation

BY: Thomas C. Turner

THOMAS C. TURNER, Vice President

STATE OF North Carolina
COUNTY OF Macon

I, a Notary Public of the County and State aforesaid, do hereby certify that THOMAS C. TURNER personally appeared before me this day and acknowledged that he is Vice President of BROOKWOOD PROPERTIES, INC., a Florida corporation, and that he, as President, being authorized to do so, executed the foregoing instrument on behalf of the Corporation.

WITNESS my hand and official stamp or seal, this the 27th day of October, 2006.



Paula E. M. Gordon

Notary Public

Paula E. M. Gordon