

DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS  
FOR  
LOST FORREST SUBDIVISION

**Developed by:**  
**Lost Forrest Development, Inc.**  
4985 Lower Roswell Road  
Marietta, Georgia 30068  
December 29, 1994

**First Amendment by:**  
**Lost Forrest Development, Inc.**  
4985 Lower Roswell Road  
Marietta, Georgia 30068  
March 25, 1995

**Second Amendment by:**  
**Lost Forrest Development, Inc.**  
4985 Lower Roswell Road  
Marietta, Georgia 30068  
October 31, 1995

**Third Amendment by:**  
**Lost Forrest Development, Inc.**  
4985 Lower Roswell Road  
Marietta, Georgia 30068  
August 14, 1996

**Fourth Amendment by:**  
**Lost Forrest Development, Inc.**  
4985 Lower Roswell Road  
Marietta, Georgia 30068  
January 12, 1998

**Fifth Amendment by:**  
**Lost Forrest Homeowners' Association**  
P.O. Box 862086  
Marietta, Georgia 30062  
\_\_\_\_ FILING DATE INSERTED HERE \_\_\_\_

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**DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS  
FOR  
LOST FORREST SUBDIVISION**

**THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR LOST FORREST SUBDIVISION** is made this 29 day of December, 1994, by LOST FORREST DEVELOPMENT, INC. a Georgia Corporation (hereinafter referred to as "Declarant").

**BACKGROUND STATEMENT**

Declarant is the owner of certain real property in Cobb County, Georgia, which is more particularly described on the attached Exhibit "A", which is made a part hereof by reference.

Declarant intends to develop on certain land, including the real property described above, a development to be known as Lost Forrest Subdivision (hereinafter referred to as the "Development"). Declarant intends by this Declaration to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within the Development by the recordation of this Declaration and amendments thereto. Declarant desires to provide a flexible and reasonable procedure for the overall development of the Development and the interrelationship between the Association (as hereinafter defined) established pursuant to this Declaration, and any non-residential areas which may become a part of the Development. Declarant also desires to establish a method for the administration, maintenance, preservation, use and enjoyment of the property that is now or hereafter subjected to this Declaration and certain other properties described in this Declaration.

Declarant has caused, or will cause, 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).

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

## 1 DEFINITIONS

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

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

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

1.3 By-Laws. "By-Laws" mean the By-Laws of the Association.

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

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

1.6 Declarant. "Declarant" means Lost Forrest Development, Inc., a Georgia corporation, and its successors-in-title and assigns, provided any such successors-in-title or assigns shall acquire for the purpose of development or sale all or any portion of the remaining undeveloped or unsold portions of the real property described in Exhibit "A", or the real property which is intended to become part of the Development, and provided further, except in case of foreclosure, in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign is designated as the "Declarant" hereunder by the grantor of such conveyance, which grantor shall be the "Declarant" hereunder at the time of such conveyance; provided, further, upon such designation of successor Declarant, all rights and obligations of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the property undeveloped or unsold portions of the real property described in Exhibit "A", or the real property which is intended to become part of the described in Exhibit "A" attached hereto, and which is now or hereafter subjected to this Declaration, there shall be only one person or legal entity entitled to exercise the rights and powers of the "Declarant" hereunder at any one time.

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

1.8 Lot. "Lot" means any parcel of land shown upon a subdivision plat recorded in the Office of the Clerk of the Superior Court of Cobb County, Georgia, covering any portion of the Property, provided, however, that no portion of the Common Property shall ever be a Lot except as provided in Section 2.5 herein.

1.9 Member. "Member" means any member of the Association.

1.10 Membership. "Membership" means the collective total of all Members of the Association.

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

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

1.13 Parcel. "Parcel" shall mean and refer to separately designated residential areas comprised of various types of housing initially or by annexation made subject to the Declaration. For example, and by way of illustration and not limitation, a condominium development, a townhouse development, an apartment complex, and a single family detached home subdivision may all be designated as separate Parcels. In the absence of specific designation of separate Parcel status, all property made subject to this Declaration shall be considered a part of the same parcel. The Board may also grant Parcel status to any area if so requested in writing by the Owners holding at least seventy-five percent (75%) of the total vote entitled to vote thereon in such area.

1.14 Property. "Property" means that certain real property hereinabove described together with such additional real property as may be subjected to the provisions of this Declaration in accordance with the provisions of Article 10 hereof.

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

1.16 Restrictions. "Restrictions" mean all covenants, restrictions, easements, charges, liens and other obligations created or imposed by this Declaration.

1.17 Structure. "Structure" means:

1.17.1 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, bathhouse, coop, cage, covered or uncovered patio, swimming pool, dock, fence, curbing, paving, wall, tree, shrub (and all other forms of landscaping), sign, signboard, temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such lot;

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

1.17.3 any change in the grade at any point on a Lot of more than six (6) inches, whether or not Subsection 1.17.2 applies to such change.

## 2 COMMON PROPERTY

2.1 Conveyance of Common Property.

- 2.1.1 *Original Section 2.1.1 deleted by Amendment Five*
- 2.1.2 *Original Section 2.1.2 deleted by Amendment Five*
- 2.1.3 *Original Section 2.1.3 deleted by Amendment Five*
- 2.1.4 *Original Section 2.1.4 deleted by Amendment Five*
- 2.1.5 *Original Section 2.1.5 deleted by Amendment Five*
- 2.1.6 *Original Section 2.1.6 deleted by Amendment Five*

2.2 Right of Enjoyment. Every Owner of a Residence shall have a non-exclusive right and easement to use and enjoy the Common Property, which said right shall be appurtenant to and shall pass with the title to every Lot upon transfer, provided, however, that no Owner shall do any act which interferes with the free use and enjoyment of the Common Property by all other Owners. The Association may permit persons who are not Owners of Residences to use and enjoy part or all of the Common Property subject to such limitations, and upon such terms and conditions as it may from time to time establish. The right and easement of enjoyment granted or permitted by this Section 2.2 is subject to suspension by the Association as provided in Sections 2.3.6 and 3.5. The Board shall have the right to promulgate rules and regulations governing the use of any Common Property. Provided however, no Owner shall have a right of easement over or across any other Owner's property for access or enjoyment of a lake or gazebo, except as may specifically be set forth on the recorded Plat of the Property.

2.3 Rights of the Association. The rights and privileges conferred in Section 2.2 hereof shall be subject to the right, and where applicable, the obligation, of the Association acting through the Board to:

2.3.1 promulgate rules and regulations relating to the use, operation and maintenance of the Common Property;

2.3.2 borrow money for the purpose of carrying out the activities of the Association, including the acquisition, construction, improvement, equipping and maintenance of the Common Property, and in aid thereof, to encumber by deed to secure debt, mortgage or other security interest, any or all of the Association's property, including Common Property and revenues from assessments, user fees and other sources;

2.3.3 grant easements or rights-of-way over Common Property to any municipality or other governmental body, agency or authority, to any quasi-public agency or to any utility company or cable television system;

2.3.4 dedicate or transfer all or any part of the Common Property or interests therein to any municipality or other governmental body, agency, or authority for such purposes and subject to such provisions and conditions as may be agreed upon by the Association and such grantee, including a provision that such property or interest shall, if such dedication or transfer is approved by a two-thirds (2/3) vote of the Members who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the By-Laws of the Association, cease to be subject to this Declaration or all or any part of the Restrictions while held by any such municipality or other governmental body, agency or authority;

2.3.5 charge reasonable fees in connection with the admission to and use of facilities or services by Members and non-members; provided that in setting any such fee, the Board may establish reasonable classifications which shall be uniform within each such class but need not be uniform between such classes;

2.3.6 suspend, pursuant to Section 3.5, the voting rights of any Member and the right of enjoyment granted or permitted by Section 2.2;

2.3.7 to sell, lease or otherwise convey all or any part of its properties and interests therein;

2.3.8 enforce all applicable provisions of valid agreements of the Association relating to the Common Property or any part thereof; and

2.3.9 maintain any and all landscaping treatments previously installed by the Declarant, to the extent that such landscaping is not otherwise maintained by the appropriate county and/or municipal entity having jurisdiction over the roads and streets for Cobb County, Georgia.

2.4 Conveyance of Common Property by Declarant to Association. The Declarant may transfer or convey to the Association any personal property and any improved or unimproved property, leasehold, easement or other property interest which is or may be subjected to the terms of this Declaration. Such conveyance shall be accepted by the Association, and the property shall thereafter be Common Property to be maintained by the Association for the benefit of all of its Members.

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

2.6 Delegation of Use. Any Owner may delegate to the members of his family or his tenants who reside on a Lot, in accordance with the By-Laws, subject to the terms and conditions of this document, his right to use and enjoy the Common Property.

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

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

#### LOST FORREST SUBDIVISION HOMEOWNERS' ASSOCIATION

3.1 Purposes, Powers and Duties of the Association. The Association shall be formed as a non-profit civic organization for the sole purpose of performing certain functions for the common good and general welfare of the people of the Development. The Association shall have no power or duty to do or perform any act or thing other than those acts and things which will promote in some way the common good and general welfare of the people of the Development. To the extent, and only to the

extent, necessary to carry out such purposes, the Association: (a) shall have all of the powers of a corporation organized under the Georgia Nonprofit Corporation Code; and (b) shall have the power and duty to exercise all of the rights, powers and privileges and to perform all of the duties and obligations of the Association as set forth in this Declaration.

3.2 Membership in the Association. Every Owner shall automatically be a member of the Association and such membership shall terminate only as provided in this Declaration of Covenants, Restrictions and Easements. For purposes of voting there shall be two (2) classes of Members, as set for the in Section 3.3.

### 3.3 Voting Rights.

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

3.3.2 *Original Section 3.3.2 deleted by Amendment Five*

3.3.3 The Development will be composed of Lots, which may be developed in phases containing unequal numbers of Lots. Each such phase, as developed, will be platted of record in the Office of the Clerk of the Superior Court of Cobb County, Georgia, in accordance with Article 10 of this Declaration. The Declarant shall notify the Association in writing when the final phase of the Development has been so platted of record. By acceptance of a deed conveying a Lot, each Owner acknowledges that, upon the filing by Declarant of the subdivision plats covering such phases, the total votes outstanding in the Association will automatically increase based upon the number of Lots in the phases added and in accordance with the formula set forth in Subsection 3.3.2. In no event shall Class B Membership cease and be converted to Class A Membership (as provided in Subsection 3.3.2) until after the Association receives the written notice provided for in the preceding sentence; provided, however, nothing contained herein shall obligate the Declarant to develop any proposed phase of the Development unless such phase is subjected to this Declaration.

3.4 Board of Directors. The affairs of the Association shall be managed by a Board of Directors. The number of Directors and the method of election of Directors shall be as set forth in the By-Laws of the Association.

3.5 Suspension of Membership. The Board may suspend the voting rights of any Member and the right of enjoyment of the Common Property of any person who:

3.5.1 shall be subject to the Right of Abatement, as defined in Section 8.2 by reason of having failed to take the reasonable steps to remedy a violation or breach of either the Restrictions or the Design Standards of the ACC (as hereinafter defined) within thirty (30) days after having received notice of the same pursuant to the provisions of Section 5.11 or 8.2 hereof:

3.5.2 shall be delinquent in the payment of any assessment levied by the Association pursuant to the provisions of Article 4 hereof; or

3.5.3 shall be in violation of the rules and regulations of the Association relating to the use, operation and maintenance of Common Property. Such suspension shall be for the balance of the period in which said Member or person shall remain in violation, breach or default, as aforesaid, except that in the case of a violation

described in this Subsection, the suspension shall be for a period exceeding sixty (60) days after the cure or termination of such violation. No such suspension shall prevent an Owner's ingress to or egress from his Lot.

3.6 Termination of Membership. Membership shall cease only when a person ceases to be an Owner.

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

3.8 *Original Section 3.8 deleted by Amendment Five*

3.8.1 *Original Section 3.8.1 deleted by Amendment Five*

3.8.2 *Original Section 3.8.2 deleted by Amendment Five*

#### 4 ASSESSMENTS

4.1 Covenant for Assessments and Creation of Lien and Personal Obligation. Each Owner of a Residence, jointly and severally, for himself, his heirs, distributees, legal representatives, successors and assigns, by acceptance of a deed for a Residence, whether or not the covenants contained herein shall be expressed in any such deed, does hereby covenant and agree as follows:

4.1.1 to pay the Association the annual assessments which may or shall be levied by the Association pursuant to this Declaration against all Residences owned by him;

4.1.2 to pay to the Association any special assessments for capital improvements and other charges which may or shall be levied by the Association pursuant to this Declaration against all Residences owned by him;

4.1.3 that there is hereby created a continuing charge and lien upon all Residences owned by him against which all such assessments are made to secure payment of such assessments and any interest thereon as provided in Section 4.9 hereof and costs of collection including reasonable attorneys' fees;

4.1.4 that such continuing charge and lien on such Residence binds such Residence in the hands of the then Owner, and the Owner's heirs, devisees, legal representatives, successors and assigns. Such charge and lien is superior to any and all charges, liens or encumbrances which may hereafter arise in any manner or be imposed upon such Lots whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, except (i) such liens for taxes or other public charges as by applicable law are made superior, and (ii) all deeds to secure debt given to secure a loan, the proceeds of which are used (1) to purchase a Residence or Residences (together with any and all Structures which may from time to time be placed or located thereon) and (2) to finance the construction, repair or alteration of such Structures;

4.1.5 that no sale or transfer at foreclosure or in lieu of foreclosure shall relieve any Residence from liability for any assessment thereafter assessed;

4.1.6 that all annual, special and specific assessments (together with interest thereon as provided in Section 4.9 of this Declaration and costs of collection including reasonable attorneys' fees) levied against any Residence owned by him during the period that he is an Owner shall be (in addition to being a continuing charge

and lien against such Residence as provided in Subsection 4.1.3 of this Declaration) a personal obligation which will survive any sale or transfer of the Residence owned by him; provided, however, that such personal obligation for delinquent assessments shall not pass to an Owner's successor in title unless expressly assumed by such successor.

4.2 Purpose of Assessment. The assessments levied by the Association shall be used for the purpose of providing for the common good and general welfare of the people of the community of the Development, including, but not limited to, security, the acquisition, construction, improvement, maintenance and equipping of Common Property, the enforcement of the Restrictions contained in this Declaration, the enforcement of the Design Standards of the ACC, the payment of operating costs and expenses of the Association and the payment of all principal and interest when due on all debts owed by the Association, all as may be more specifically authorized from time to time by the Board.

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

4.4 Annual Assessment.

4.4.1 Beginning on the date each Lot is sold, transferred, or leased to a party other than Declarant or a builder (the "Commencement Date"), and continuing thereafter until January 1 of the year immediately following the Commencement Date, each Lot so sold, transferred or leased shall be subject to an annual assessment of not more than Two Hundred Forty Dollars and No Cents (\$240.00) per Residence to be payable in One (1) annual installment. In the event that the Commencement Date falls on a day other than January 1, the annual assessment for such year shall be prorated so that each Owner pays an annual assessment proportional to the number of days remaining in the calendar year. The words "Assessment Year" as used herein shall mean the calendar year with the first Assessment Year commencing on January 1 of the year immediately following the Commencement Date.

4.4.2 Commencing with the first Assessment Year and continuing thereafter, the annual assessment may be increased at any time and from time to time during each Assessment Year not more than ten percent (10%) above the annual assessment for the previous Assessment Year without a vote of the Membership.

4.4.3 Commencing with the first Assessment Year and continuing thereafter, the annual assessment for each Assessment Year may at any time and from time to time be increased more than ten percent (10%) above the maximum annual assessment for the previous Assessment Year if such increase is approved by a two-thirds (2/3) vote of the Members of the Association who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the provisions of the By-Laws of the Association and this Declaration.

4.5 Special and Parcel Assessments.

4.5.1 In addition to the annual assessments authorized by this Article 4, the Association may levy, in any Assessment Year and with such frequency as the Association shall deem necessary, special assessments for the purpose of paying, in whole or in part, any unanticipated operating expenses, as well as the cost of any construction, reconstruction, repair or replacement of a capital improvement on the Common Property. Such special assessments may be levied by the Board in any Assessment Year without the approval of the Members, which special assessments in the aggregate to not exceed an amount equal to the annual assessment then in effect.

Special assessments exceeding said amount shall require the approval of two-thirds (2/3) of the Members of the Association who are present in person or by proxy at a meeting of the Members duly held in accordance with the provisions of the By-Laws of the Association and this Declaration.

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

#### 4.6 Assessment Procedure.

4.6.1 The Board shall establish the annual assessment for each Assessment Year at an amount not in excess of the maximum annual assessment as determined by the provisions of this Article 4, and shall also establish the date during the Assessment Year on which the annual assessment shall be due and payable (such date is hereinafter referred to as the "Due Date"). The Board shall also establish an annual budget which shall list the estimated operating expenses and shall contain an amount to be set aside each year into a reserve allowance to be used for future repair and replacement of the Common Property; provided, however, in no event shall the Board be required to provide for a reserve sufficient to cover all such future repair and replacement of the Common Property, it being intended that a portion of such costs will be covered by Special Assessment. The Board shall cause the Association to send to each Owner at least thirty (30) days in advance of the Due Date written notice setting forth the amount of the annual assessment and the Due Date. The annual assessment shall become due on the thirtieth (30<sup>th</sup>) day following the mailing of such written notice, or the Due Date, whichever is later. The Board may establish reasonable payment procedures to allow or require payment of the annual assessment in installments during the Assessment Year. The Board shall also establish payment procedures for payment of any special assessments for capital improvements which may be levied in accordance with the provisions of this Article 4.

4.6.2 All Members of the Association shall be given written notice by the Board not less than thirty (30) nor more than sixty (60) days in advance of any meeting of the Members of the Association at which the Board shall propose taking action pursuant to this Article 4. Such written notice shall specify under which Section or Sections the Board will propose action. At such meeting, the presence of Members or of proxies entitled to cast fifty percent (50%) of the total votes outstanding shall constitute a quorum. If the required quorum is not present at such meeting, a second meeting may be called by the Board subject to the same notice requirement, and the required quorum at such second meeting shall be thirty percent (30%) of the total votes outstanding. No such second meeting shall be held more than sixty (60) days following the first meeting. If the required quorum is not present at the second meeting, the Board may take such action without approval of the Members.

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

4.8 *Original Section 4.8 deleted by Amendment Five*

4.9 Effect of Nonpayment of Assessments. Any Assessment which is not paid on or before the Due Date shall bear interest after the Due Date at the lower of the (i) the highest legal rate of interest which can be charged, (ii) the rate of eighteen (18%) percent per annum, or (iii) the rate as the Board may from time to time establish. Provided, however, in no event shall the Board have the power to establish a rate of interest in violation of the laws of the State of Georgia. In the event of default in the payment of any one or more installments of an assessment, the Board may declare any remaining balance of the assessment at once due and payable. In the event that an Owner shall fail to pay fully any portion of any assessment prior to the date on which payment is due, such unpaid portion (including any remaining balance declared immediately due and payable in accordance with the preceding sentence), together with

interest and costs of collection including reasonable attorneys' fees, shall be a binding personal obligation of such Owner, as well as a lien on such Owner's Residence enforceable in accordance with the provisions of this Declaration.

4.10 Certificate of Payment. Upon written demand by an Owner, the Association shall, within a reasonable period of time, issue and furnish to such Owner a written certificate stating that all assessments (including penalties, interests and costs, if any) have been paid with respect to any Lot owned by said Owner as of the date of such certificate, or that all assessments, interest and costs have not been paid, setting forth the amount then due and payable. The Association may make a reasonable charge for the issuance of such certificate, and may require said charge payable prior to the issuance of such certificate. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser of, or lender on, the Lot in question.

4.11 *Original Section 4.11 deleted by Amendment Five*

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

4.12.1 Expenses of the Association which benefit less than all of the residences, which may be specifically assessed equitably among all of the Residences which are benefited according to the benefit received; and

4.12.2 Expenses incurred by the Association pursuant to Section 6.14 hereof, except that those expenses may be assessed against the individual Owner(s) involved as set forth in Section 6.14.

4.13 Fines. Reasonable fines as may be imposed in accordance with the terms of the Declaration and By-Laws.

## 5 ARCHITECTURAL CONTROL

5.1 Architectural Control Committee: Creation and Composition.

5.1.1 An Architectural Control Committee (the "ACC") shall be established consisting of not less than three (3) nor more than five (5) individuals, providing, however, that the ACC shall always have an uneven number of members. Notwithstanding anything to the contrary contained herein, Declarant shall have the right, but not the obligation, to appoint all members of the ACC until the plans for all of the Residences for all of the Lots in the Development have been approved by the ACC. Thereafter, the Board shall appoint the members of the ACC.

5.1.2 Each initial member of the ACC shall be appointed for a term expiring on December 31, 1995. Thereafter, each member of the ACC shall be appointed for a calendar year term. If any vacancy shall occur in the membership of the ACC by reason of death, incapacity, resignation, removal or otherwise, the remaining members of the ACC shall continue to act and such vacancy shall, subject to the provisions of Subsection 5.1.1, be filled by and at the election of the Board, if at that time the Board has the right to appoint members of the ACC. Said vacancy shall be filled at the earliest possible time. Any ACC member may resign at any time by giving written notice of such resignation to the Chairman of the ACC and such

resignation shall take effect upon receipt thereof by the Chairman. Any member of the ACC may be removed at any time with or without cause by the Board, if at the time the Board has the right to appoint members of the ACC.

5.2 Purpose, Powers and Duties of the ACC. The purpose of the ACC is to assure that any installation, construction or alteration of any Structure on any Lot shall be submitted to the ACC for approval (i) as to whether the proposed installation, construction or alteration is in conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the standards of the Lost Forrest Subdivision Development, and (ii) as to the location of Structures with respect to topography, finished ground elevation and surrounding Structures. To the extent necessary to carry out such purpose, the ACC shall have all of the powers and duties to do each and every thing necessary, suitable, convenient or proper for, or in connection with, or incidental to, the accomplishment of such purpose, including without limitation, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any Structure on any Lot. The ACC shall have the authority to pre-approve plans and specification for a builder.

5.3 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 deem necessary. The members of the ACC shall be reimbursed by the Association for traveling expenses and other reasonable out-of-pocket costs incurred in the performance of their duties as members of the ACC.

5.4 Operations of the ACC.

5.4.1 Meetings. The ACC shall hold regular meetings at least once every twelve (12) months or more often as 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 times and at such places as the ACC may specify. Notice of each regular or special meeting of the ACC shall be mailed to each member thereof at his or her residence or usual place of business at least three (3) days before the day the meeting is to be held. Notice of regular and special meetings need not specify the purpose or purposes for which the meeting is called. Notice of a meeting need not be given to any member of the ACC who signs a waiver of notice either before or after the meeting. Attendance of a member of the ACC at a meeting shall constitute a waiver of notice of such meeting, and shall constitute a waiver of any and all objections to the form and sufficiency of the notice of said meeting, 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. Except as otherwise provided herein, the act 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 as 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, or any action which may be taken at a meeting of the ACC, may be taken without a meeting if written consent, setting forth the action so taken, shall be signed by all members of the ACC and 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.

## 5.4.2 Activities.

5.4.2.1 The ACC shall adopt and promulgate the Design Standards described in Section 5.5 hereof and shall, as required, make findings and determinations, rulings and orders with respect to the conformity with said Design Standards of plans and specifications to be submitted for approval to the ACC pursuant to the provisions of the 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.

5.4.2.2 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 the 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 on its own motion or appeal by the applicant to the ACC as provided in this Subsection 5.4.2.2. Written notice of the decision of such two (2) or more members shall, within five (5) working days thereof, be given to any applicant for an approval, permit or authorization. The applicant may, within ten (10) days after the 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 even 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. During the time period in which the ACC is reconsidering the matter, the ACC's decision shall be stayed and no action may be taken in accordance with said decision.

## 5.5 Design Standards.

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

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

5.5.1.2 governing the procedure for such submission of plans and specifications;

5.5.1.3 establishing guidelines with respect to the approval and disapproval of (1) design features, architectural styles, exterior colors and materials, details of construction, location and size of Structures, (2) the size, location, type, coloration and appearance of any allowed signage, including without limitation "For Sale", "For Rent" and "For Lease" signs, and (3) all other matters that require approval by the ACC pursuant to this Declaration;

5.5.1.4 assuring the conformity and harmony of external design and the general quality of the Lost Forrest Subdivision.

5.5.2 The ACC shall make a copy of its current Design Standards, as they may exist from time to time, readily available to Members and prospective Members of the Association, and to all applicants seeking the ACC's approval. Provided however, the expense of copying all or any portion of the written Design Standards shall be born by the person or persons requesting a copy thereof.

5.6 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 therefor 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, but not limited to:

- 5.6.1 a site plan showing the location of all proposed and existing Structures on the Lot including building setbacks, open space, driveways, walkways, easements, and parking spaces, including the number thereof and all siltation and erosion control measures;
  - 5.6.2 a foundation plan;
  - 5.6.3 a floor plan;
  - 5.6.4 exterior elevations of all proposed Structures and alterations to existing Structures, as such Structures will appear after all back-filling and landscaping are completed;
  - 5.6.5 specifications of materials, finishes and color schemes, lighting scheme and other details affecting the exterior appearance of all proposed Structures and alterations to existing Structures;
  - 5.6.6 plans for landscaping, grading and if requested, water run-off,
- and
- 5.6.7 name of builder or contractor.

5.7 Approval of Plans and Specifications. Upon approval by the ACC of any plans and specifications submitted pursuant to this Declaration, two (2) copies of such plans and specifications, as approved, shall be deposited for permanent record with the ACC and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting same. Approval for use in connection with any Lot or Structure of any plans and specifications shall not be deemed to be 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 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.

Construction of a Structure on any Lot, or any approved alterations or other Structure shall commence within ninety (90) days from the approval of the plans and specifications by the ACC. The exterior of all Structures shall be completed within six months after the construction of the same shall have been commenced, except where such completion is impossible or would result in great hardship to the Owner or builder due to strikes, fires, floods, lightning, earthquakes or other casualties, and notwithstanding the foregoing provision, the exterior of all Structures shall be completed within one year after the construction of such Structure shall have commenced. During the time when construction is halted, the Owner and any builder shall use all reasonable means to keep the Lot reasonably free from construction debris and trash.

5.8 Disapproval of Plans and Specifications. The ACC shall have the sole right and absolute discretion to disapprove any plans and specifications submitted pursuant to this Declaration for any reason, including but not limited to the following:

- 5.8.1 the failure to include information in such plans and specifications as may be reasonably requested;

5.8.2 the failure of such plans or specifications to comply with this Declaration or the Design Standards;

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

5.9 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 the 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.

5.10 Inspection Rights. Any employee or agent of the Association or the ACC may, after reasonable notice, at any reasonable time or times, enter upon any Lot or 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, is carried out in accordance with the terms of this Article.

5.11 Violations. If any Structure shall be erected, placed, maintained or altered upon any Lot, otherwise than in accordance with the plans and specifications approved by the ACC pursuant to the provisions of this Article, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If the construction or alteration of any Structure or Lot shall not proceed with reasonable diligence toward completion once begun, said construction or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If, in the opinion of the ACC, such violation shall have occurred, the ACC shall notify the Association and the Board shall provide written notice to the Owner by certified mail, setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation. If the Owner shall not have taken reasonable steps toward the required remedial action within thirty (30) days after the mailing of the aforesaid notice of violation, then the Association shall have the Right of Abatement as provided in Section 8.2 hereof.

5.12 Certification of Compliance.

5.12.1 Upon completion of the installation, construction or alteration of any Structure or Lot in accordance with plans and specifications approved by the ACC, the ACC shall, upon written request of the Owner thereof or upon the ACC's own initiative, issue a Certificate of Compliance, identifying such Structure and the Lot upon which such Structure is placed, and stating that the plans and specifications have been approved and that such Structure or Lot 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.

5.12.2 Any Certificate of Compliance issued in accordance with the provisions of this Article 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.

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

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

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

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

5.16 Image Committee. At any time, the ACC may establish an image committee (the "Image Committee") which shall be composed of one (1) member of the ACC and two (2) Members of the Association, other than Declarant, which shall be responsible for the review and approval process for alterations and modifications of existing Structures as required pursuant to Section 5.6, and shall have such other responsibilities as may be delegated to the Image Committee by the ACC, provided, however, in all instances the ACC shall have the right to veto any action or decision of the Image Committee.

## 6 GENERAL COVENANTS AND RESTRICTIONS

6.1 Application. The covenants and restrictions contained in this Article 6 shall pertain and apply to all Lots and to all Structures erected, maintained or placed thereon.

## 6.2 Restriction of Use.

6.2.1 Lots shall be used for single-family residences only and for no other purpose; however, certain home business uses are allowed if they do not disturb the community. Acceptable uses are telephone work, standard office work, computer work and certain home businesses that meet the following restrictions:

- a) Is not detectable by sound (such as nail guns presses or machinery), by sight (such as use of outbuildings, the garage or exterior areas), or by odor (such as solvents, commercial kitchens or noxious chemicals).
- b) Does not involve more than one employee that is not a resident of the home; or frequent visits by customers or clients.
- c) Does not involve commercial trucks or deliveries of materials, other than standard office supplies and express mail.
- d) Does not involve storage or use of hazardous materials or flammables, exterior storage manufacturing, assembly, expansion of the utility connections to the house or produce trash or refuse in any greater quantities than normal for a household.
- e) For clarification, any business use must also meet the county zoning restrictions or the business is not allowed. Business signs shall not be allowed.
- f) Space in the residence may not be leased or rented, for profit or consideration, to others to operate a business. A resident must be an active participant in the business.

All Residences must have One-Thousand Eight Hundred (1800) square feet or more of heated floor space.

6.2.2 During the first six (6) months an Owner owns any Lot, said Lot shall not be rented or leased to any person outside that Owner's immediate family. Providing however, the Board may, upon request and in its absolute discretion, waive the provisions of the preceding sentence.

6.2.3 After an Owner owns a Residence for six (6) months, it may be leased by that Owner for residential purposes. All leases shall have a minimum term of six (6) months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, By-Laws, and any rules and regulations promulgated by the Association. The lease shall also obligate the tenant to comply with the foregoing and shall provide that in the event of noncompliance, the Board, in addition to any other remedies available to it, may evict the tenant on behalf of the Owner for any violation or failure to act on the part of the Owner or such tenant under these covenants, and specifically assess all costs associated therewith against the Owner and the Owner's property.

6.2.4 All provisions of the Declaration, By-Laws, and any rules and regulations, Design Standards, and all regulations which govern the Owner and which provide for sanctions against Owners shall also apply to all persons who occupy the property (the "Occupants"), even though Occupants are not specifically mentioned.

6.3 Resubdivision of Property. No Lot may be split, divided or subdivided for sale, resale, gift, transfer, or otherwise, without the prior written approval of the ACC of plans and specifications for such split, division or subdivision. Notwithstanding the foregoing, nothing herein shall prevent the Owners of any Lots from combining two or more Lots into one Lot for construction of a single Residence thereon; provided, however, that such combined Lot may not be subdivided thereafter

(except as outlined above) and further provided that the Owner of the Residence on such Lot shall be responsible for annual and special assessments based upon the number of Lots combined into one Lot.

6.4 Erosion Control. No activity which may create erosion or siltation problems shall be undertaken on any Lot without the prior written approval of the ACC of plans and specifications for the prevention and control of such erosion or siltation. The ACC may, as a condition of approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include, but are not limited to, physical devices for controlling the run-off and drainage of water, special precautions in grading and otherwise changing the natural landscape and required landscaping as provided for in Section 6.5. Guidelines for the prevention and control of erosion and siltation may be included in the Design Standards of the ACC.

6.5 Landscaping. No construction or alteration of any Structure shall take place without the prior written approval by the ACC of plans and specifications for the landscaping to accompany such construction or alteration. Guidelines for the landscaping to accompany the construction or alteration of any Structure may be included in the Design Standards of the ACC. Any decorative appurtenances such as sculptures, bird bathes, fountains, gazebos, or other decorative embellishments which are visible from the street, must be approved by the ACC.

6.6 Trees. Unless a tree is suffering from disease or is dead, no tree having a diameter of three (3) inches or more (measured from a point two (2) feet above ground level) shall be removed from any Lot unless such removal is in conformity with approved landscaping plans and specifications submitted pursuant to the provisions of Section 6.5 herein. Guidelines relating to the preservation of trees and other natural resources and wildlife upon the Property may be included in the Design Standards of the ACC.

6.7 Temporary Buildings. No temporary building, trailer, garage or building under construction shall be used, temporarily or permanently, as a residence on any Lot except as temporary sleeping or living quarters required or desirable for security purposes in accordance with plans and specifications approved by the ACC. No contractor or builder shall erect on any Lot any temporary building or shed for use in connection with construction on such Lot. Provided however, the ACC may, in its sole discretion, waive this requirement for temporary construction trailers.

6.8 Signs.

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

6.8.1.1 such signs as may be required by legal proceedings;

6.8.1.2 such permits as may be required by a governmental entity;

6.8.1.3 not more than one "For Sale" sign, such sign having a maximum face area of four square feet; provided that such sign may only be displayed in the front yard of a Lot; and further provided that if, at the time of any desired use of such sign, the Association is making "For Sale" signs available for the use of Owners or their agents, the signs made available by the Association must be used;

6.8.1.4 directional signs for vehicular or pedestrian safety in accordance with plans and specifications approved by the ACC.

6.8.2 “For Rent” for “For Lease” signs are prohibited.

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

6.8.4 All signs, including without limitation, “For Sale” signs, must be designed, placed and maintained in accordance with the Development-Wide Standard.

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

6.10 Fences. No fence or wall of any kind shall be erected, maintained or altered on any Lot without the prior written approval of the ACC of plans and specifications for such fences and walls. Guidelines relating to the design, location and uses of fences and walls may be included in the Design Standards of the ACC. Absent specific written waiver from the ACC, all wood fences must be installed so that the finish side of the fence faces outward from the Owner’s Lot, so that the support structure side of the fence should face the Owner’s Lot.

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

6.12 Antennae, Etc. No exterior television or radio antennae, satellite dish larger than one meter in diameter, receiver, or solar equipment of any sort shall be placed, allowed or maintained upon any portion of a Structure or Lot without prior written approval by the ACC. The location of satellite dishes one meter in diameter or less shall be submitted in writing to the ACC for approval. No antennae shall be installed or used for the purpose of transmitting electronic signals.

6.13 Clotheslines, Solar Equipment, Garbage Cans, Etc. All clotheslines, equipment, garbage cans, woodpiles and solar equipment shall be kept screened by adequate planting and/or fencing so as to conceal them from view of neighboring residences and from the streets. Such materials may only be maintained in the rear yard on a Lot. No exposed above-ground tanks for the storage of fuel, water or any other substance shall be located on any Lot.

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

said notice by certified mail, then the Association shall have the Right of Abatement as provided in Section 8.2 hereof. Provided however, in cases of emergency involving a threat to human life or well being, the Association shall have the right to shorten the thirty (30) day period as conditions may require. Guidelines relating to the maintenance of Structures and landscaping may be included in the Design Standards of the ACC.

6.15 Commercial and Recreational Vehicles and Trailers. No commercial vehicle, house trailer, mobile home, motor home, recreational vehicle, camper, (but not including a pickup truck with or without camper top), tractor, tractor trailer, boat or boat trailer or like equipment shall be permitted on any Lot on a permanent basis, but shall be allowed on a temporary basis not to exceed forty-eight (48) consecutive hours. The ACC shall have the right to conditionally waive or vary the provisions of this paragraph under such terms as it shall determine from time to time.

6.16 Recreational Equipment. Recreational and playground equipment shall be placed or installed only upon the rear of a Lot as approved by the ACC. Basketball goals may only be placed so that they are not visible from the street, and shall not be placed on the front of the Structure at any time. No above ground pools shall be allowed. All swimming pools, hot tubs and spas must be approved by the ACC. All play equipment (excepting basketball poles) must be wood construction, environmentally and aesthetically compatible, and approved by the ACC. All pole mounted basketball goals must be mounted on black poles and have backboards either clear or white, providing same are not visible from the street unless waived by the ACC.

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

6.18 Animals. No agricultural animals may be kept on any Lot and no animals, including birds, insects, and reptiles may be kept on any Lot unless kept thereon solely as household pets and not for any commercial purpose whatsoever. Household pets shall be limited to a reasonable number. No animal shall be allowed to become or remain a nuisance. No Structure for the care, housing or confinement of any animal shall be constructed, placed or altered on any Lot unless plans and specifications for said Structure have been approved by the ACC. Dogs which are household pets shall, at all times whenever they are outside a Residence, be on a leash or otherwise confined in a manner acceptable to the Board. Without limiting the foregoing, no pet that has caused damage or injury may be walked in the Development. No stable, poultry house, rabbit hut or other similar yard structure, with the exception of a doghouse, shall be constructed or allowed to remain on any Lot. The installation, construction or maintenance of other pet houses or pet runs shall be made only with the approval of the ACC. In all cases, the Owner shall take all steps necessary to reduce or eliminate any odors which arise as a result of a pet or pets being kept on the premises.

6.19 Solid Waste.

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

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

6.19.3 Except for building materials employed during the course of

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

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

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

6.21 Compost. No compost pile or piles shall be maintained or allowed to accumulate on any Lot.

6.22 Mailboxes. All mailboxes and mailbox posts shall conform in design and material as designated by the Design Standards. Only one mailbox may be located on any Lot. The mailboxes shall be maintained by the Owner to compliment the neighborhood, and shall be installed only with the approval of the ACC. In the event any mailbox is destroyed or damaged, it shall be promptly repaired or replaced by the Owner.

6.23 Exterior. Except as may be permitted by the ACC, no window air-conditioning units shall be installed which are visible from any street. Except for seasonal Christmas decorative lights, all exterior lights must be approved by the ACC. All exterior lights shall be properly maintained by the Owner at all times. If the Residence includes garage doors, they shall remain closed at all times except during times of ingress and egress from the garage. One neighborhood-wide garage sale per calendar year is permitted with prior approval of the Board of Directors.

6.24 Vehicles. Adequate off-street parking shall be provided by the Owner of each Lot for the parking of vehicles, and no Owner shall park any vehicle (including, without limitation, boats, campers, motorcycles, scooters and vehicles of any and every description) on the streets of the Development as a matter of course. No vehicle may be left upon any portion of the Development, except in a garage or other area designated by the Board, for a period longer than five (5) days. No vehicles shall be parked on the grassed areas or taken off of the driveways or streets. No vehicles shall be parked within a front yard unless such front yard is part of a driveway, turnaround, garage or carport approved by the ACC.

6.25 Garages. Garage doors shall not be removed at any time.

6.26 Hobbies. The pursuit of hobbies or other activities, including without limitation, the assembly or disassembly of motor vehicles and other mechanical devices, or other activities which might tend to be disorderly or unsightly shall not be pursued or undertaken in the front yard of any Lot or in any driveway, garage, carport or other place where such activity is visible from the street.

## 7 EASEMENTS, ZONING AND OTHER RESTRICTIONS

### 7.1 Easements

7.1.1 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, any part of the Common Property, or any Lot (except any Residence located upon such Lot) for any purpose which Declarant deems necessary, including, by way of example and not limitation, the following:

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

7.1.1.2 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;

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

7.1.1.4 the planting or replanting of hedges, shrubbery, bushes, trees, flowers and plants of any nature.

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

7.2 Easement Area. The words "Easement Area" as used herein, shall mean those areas on any Lot or any other portion of the Property with respect to which easements (of any nature) are shown on a recorded deed, easement agreement or on any filed or recorded map or plat relating thereto.

7.3 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 other wrongful act solely by reason of such entry and the carrying out of such purposes; provided, however, 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 7.1.

7.4 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.

## 8 ENFORCEMENT

8.1 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, or (iii) each Owner, his or her legal representatives, heirs, successors and assigns.

8.2 Right of Abatement.

8.2.1 Except where different notice provisions are provided in Sections 5.11 and 6.14 herein, in the event of a violation or breach of any Restriction contained in this Declaration, the Association shall give written notice by certified mail to the Owner setting forth, in reasonable detail, the nature of such violation or breach and the specific action or actions needed to be taken to remedy such violation or breach. If the Owner shall fail to take reasonable steps to remedy such violation or

breach within thirty (30) days after the mailing of said notice [or earlier, as provided in Article 6], then the Association shall have the Right of Abatement.

8.2.2 The Right of Abatement as used in this Article and in Sections 5.11 and 6.14 hereof, means the right of the Association, through its agents and employees, to enter at all reasonable times upon any Lot or Structure as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove or repair such violation, breach or other condition which may exist thereon contrary to the provisions hereof, without being deemed to have committed a trespass or wrongful act solely by reason of such entry, providing such entry and such actions are carried out in accordance with this Article. The costs of such entry and action, 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 eighteen (18%) percent per annum, shall 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 provision of Section 8.4 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 4.1 hereof, and (iii) all deeds to secure debt given to secure a loan, the proceeds of which are used (1) to purchase a Lot or Lots, together with any and all Structures which may from time to time be placed or located thereon, and (2) to finance the construction, repair or alteration of Structures.

8.3 Specific Performance. Nothing contained in this Declaration shall be deemed to affect or limit the rights of 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. Accordingly, any beneficiary hereof shall be entitled to relief by way of injunction or decree of specific performance, as well as any other relief available at law or in equity to enforce the provisions hereof.

#### 8.4 Collection of Assessments and Enforcement of Lien.

8.4.1 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 same, or an action to foreclose any lien created by this Declaration against the Lot or Lots subject to the lien, or both, for the purpose of collecting such assessment, cost or charge, plus any interest thereon and costs of collection, including reasonable attorneys' fees.

8.4.2 As an additional remedy, but in no way as a limitation of the remedies provided herein, 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 said Lot or Lots subject to the lien at auction, at the usual place for conducting sales at the Cobb County Courthouse 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 its 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 its assigns the agent and attorney in fact

of each Owner to make such recitals and to execute such deeds and conveyances as are necessary to carry out the purposes of this Article. Each Owner hereby covenants and agrees that the recitals and conveyances so made by the Association or its 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 the conveyance to be made by this Association or its 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 its assigns shall collect the proceeds of such sale, and after reserving therefrom the entire amount of assessments, interest, cost or other charge due, together with all costs and expenses of sale, and fifteen (15%) of the aggregate amount due for attorneys' fees, shall pay any excess to such Owner, or to the heirs or assigns of such Owner as provided by law. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise, and are granted as cumulative to the remedies for collection of said indebtedness as provided by law.

8.4.3 WAIVER. EACH OWNER, BY ACCEPTANCE OF A DEED CONVEYING A LOT SUBJECT TO THIS DECLARATION, WAIVES ANY RIGHT WHICH OWNER MAY HAVE UNDER THE CONSTITUTION OR THE LAWS OF THE STATE OF GEORGIA OR THE CONSTITUTION OR THE LAWS OF THE UNITED STATES OF AMERICA TO NOTICE OR TO A JUDICIAL HEARING PRIOR TO THE EXERCISE OF ANY RIGHT OR REMEDY PROVIDED BY THIS DECLARATION. OWNER HEREBY WAIVES OWNER'S RIGHTS, IF ANY, TO SET ASIDE OR INVALIDATE ANY SALE DULY CONSUMMATED IN ACCORDANCE WITH THE PROVISIONS OF THIS DELCARATION 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.

8.5 No Waiver. The failure of 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.

## 9 DURATION AND AMENDMENT

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

9.2 Amendments by Board of Directors. The Board of Directors may amend this Declaration 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.

9.3 Amendments by Association. Amendments to this Declaration, other than those authorized by Section 9.2 hereof, shall be proposed and adopted only in the following manner:

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

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

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

## 10 ANNEXATION AND FUTURE DEVELOPMENT.

10.1 Annexation. No real property may be annexed to the Property unless such annexation is approved by a two-thirds (2/3) vote of the Members of the Association who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the provisions of the By-Laws of the Association.

10.2 *Original Section 10.2 deleted by Amendment Five*

## 11 MISCELLANEOUS.

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

11.2 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 and the offending provision shall be severed from this Declaration.

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

11.4 Gender. Throughout this Declaration, the masculine gender shall be deemed to include the feminine and the neuter gender, as well as the singular, the plural and vice versa where the context so requires.

11.5 Notices. All amendments, notices, requests, objections, waivers, rejections, agreements, approvals, disclosures or consent of any kind made pursuant to this Declaration, whether made by the 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) *Original Section 11.5 (a) deleted by Amendment Five*

(b) As to Association, Lost Forrest Homeowners' Association, Inc., P.O. Box 862086, Marietta, Georgia 30062;

(c) As to Owners Each Owner's address as registered with the Association in accordance with the By-Laws, or, if no address is furnished to the Association, to Owner at the street address of the Lot.

Any written communication transmitted in accordance with this Section 11.5 shall be deemed received on the third (3<sup>rd</sup>) day following the day such written notice is deposited in the United States Mail. Declarant shall also have the right to hand deliver such notice or notices by hand to the Owners at the street address of the Owner's Lot.

11.6 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 power to enforce the terms and provision of this Declaration against every other Owner.

11.7 Insurance.

11.7.1 At all times during the term of this Declaration, the Association, its successors and assigns, shall be required to keep any and all recreational facilities and any other improvements located on the Common Property fully insured by a reputable insurance company authorized to transact business in the State of Georgia with (i) fire, vandalism, malicious mischief and extended coverage insurance in an amount adequate to cover the cost or replacement of such improvements in the event of loss of any or all of such improvements, fixtures and contents thereof; and (ii) public liability insurance in such amounts as shall be determined by the Board of Directors as appropriate for the type of recreational activities which shall be allowed on the Common Property. Any such policies of insurance shall require that the certificate holders and insureds be given thirty (30) days prior written notice of any cancellation of such policies.

11.7.2 Immediately after the damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair and reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty.

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

11.7.4 If the damage or destruction for which the insurance proceeds

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

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

11.7.6 The deductible for any casualty insurance policy carried by the Association may, in the event of damage or destruction, be paid by the Association. Provided, however, nothing herein shall restrict or limit the right of the Association to recover all or part of any damages it may suffer, including the deductible herein, from such person(s) or entities as may be responsible.

11.8 *Original Section 11.8 deleted by Amendment Five*

11.9 Notice of Sale. If an Owner sells his or her Residence the Owner shall give to the Board, in writing, the name of the purchaser of the Residence and such other information as the Board may reasonably require within ten (10) days after the sale is effectuated.

11.10 Agreements. Subject to the prior approval of Declarant (so long as Declarant owns any property for development and/or sale in the Property or has the right to unilaterally annex additional property to the Property) all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Property or the privilege of possession and enjoyment of any part of the Property.

11.11 Variances. Notwithstanding anything to the contrary contained herein, the Board or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the By-laws and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development of the Property.

11.12 Indemnification. To the fullest extent allowed by applicable Georgia law, the Association shall indemnify every officer and director against any and all expenses, including, without limitation, attorney's fees, imposed upon or reasonably incurred by any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which such officer or director may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled.

11.13 Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by Members holding at least seventy-five (75%) percent of the total votes in the Association, provided however, during any period in which Declarant has the right to appoint and remove officers and directors of the Association, such proceeding must be approved in writing by

Declarant. This Section shall not apply, however, to: (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided in Article 4 hereof, (c) proceedings involving challenges to *ad valorem* taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made by the Declarant pursuant to Article 9, or is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

11.14 Security. The Association shall not have any responsibility to provide security of any kind for Owners.

## 12 MORTGAGEE PROVISIONS.

The following provisions are for the benefit of holders of first mortgages or deeds to secure debt (sometimes collectively referred to herein as “mortgages”) on Residences in the Development. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

12.1 Notices of Action. An institutional holder, insurer, or guarantor of a first mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, guarantor and the Residence number and name of the Owner of such Residence), hereinafter known as an “eligible holder”, will be entitled to timely written notice of:

12.1.1 any condemnation loss or any casualty loss which affects a material portion of the Development or which affects any Residence on which such eligible holder is a mortgagee, or otherwise insures or guarantees said mortgage;

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

12.1.3 any lapse, cancellation or material modification of any insurance policy maintained by the Association; or

12.1.4 any proposed action which would require the consent of a specified percentage of eligible mortgagees.

12.2 No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first mortgagee of any residence in the cases of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

12.3 Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name, address and his account number of the holder of any mortgage holding encumbering such Owner’s Residence.

12.4 Amendment by Board. Should the Veterans Administration, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, or any of those requirements not apply to this Development, then the Board, without the approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

12.5 Applicability of Article 12. Nothing contained in this Article shall be

construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Georgia law for any of the acts set out in this Article.

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

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

Executed in our presence  
DEVELOPMENT, INC.  
this the 2 day of  
December, 1995

LOST FORREST

By: \_\_\_\_\_

B.

Wilmont Williams, President  
Unofficial Witness

Attest:

\_\_\_\_\_  
Notary Public

Title:

\_\_\_\_\_  
My commission expires

[NOTARY SEAL]  
[CORPORATE SEAL]

**CONSENT TO AMENDMENT TO DECLARATION**

The undersigned, being the holder of one or more security deeds for which the property described in Exhibit "A" is pledged, does hereby consent to and submits all of the property described in Exhibit "A" of this Declaration, which Exhibit "A" is specifically made a part of this Consent, to all of the terms and provisions of this Declaration, and specifically agrees that any foreclosure or exercise of the rights of the undersigned under its security deeds will be subject to the terms and conditions of this Declaration.

IN WITNESS WHEREOF, the undersigned, acting through its duly authorized officers, has caused this Consent to be executed and sealed this \_\_\_\_\_ day of December, 1994.

FIDELITY NATIONAL BANK,

N.A.

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
\_\_\_\_\_  
Unofficial Witness  
Vice Pres.

By:  
Al Facchinetti, Sr.

\_\_\_\_\_  
\_\_\_\_\_  
Notary Public  
My commission expires:

Attest:  
  
Title:

[NOTARY SEAL]

[SEAL]

**FIRST AMENDMENT TO DECLARATION OF COVENANTS,  
RESTRICTIONS AND EASEMENTS FOR LOST FORREST SUBDIVISION**

This First Amendment to the Declaration of Covenants, Restrictions and Easements for Lost Forrest Subdivision (the "First Amendment"), made this the 25<sup>th</sup> day of March, 1995, by Lost Forrest Development, Inc., a Georgia Corporation ("Declarant"):

**WITNESSETH, that:**

WHEREAS, Declarant is the developer of Lost Forrest Subdivision; and

WHEREAS, Lost Forrest Subdivision is subject to certain protective covenants, which were filed January 5, 1995 and recorded at Deed Book 8666, Page 390 of the records of the Superior Court of Cobb County, Georgia (the "Declaration"); and

WHEREAS, Declarant desires to amend the Declaration to change the annual assessment which each lot is to be subject to; placed

NOW THEREFORE, Declarant does hereby amend the Declaration for Lost Forrest Subdivision as follows:

All terms in this First Amendment shall have the same meaning as they

do in the Declaration unless otherwise defined.

The annual assessment to be assessed against each Lot pursuant to Section 4.4 shall be increased from Two Hundred Forty (\$240.00) Dollars to Three Hundred Sixty (\$360.00) Dollars.

Declarant's right to annex additional real property pursuant to Section 10.1 of the Declaration shall include the right to annex non-contiguous property. Declarant may evidence any annexation of property by the methods set forth in Section 10.1 of the Declaration or by an amendment to the Declaration. In the event additional property is annexed by Declarant, such property shall be deemed to be part of the Development as set forth in Section 3.8.1.

All other terms, conditions, easements and restrictions in the Declaration shall remain in full force and effect.

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

Signed, sealed and delivered in our  
DEVELOPMENT, INC.  
presence this the 24 day of March, 1995.

LOST FORREST

By: \_\_\_\_\_  
Witness  
Williams, President

B. Wilmont

Attest: \_\_\_\_\_  
Notary Public  
My commission expires:

Secretary

[NOTARY SEAL]  
SEAL]

[CORPORATE

**CONSENT OF LENDER**

The undersigned hereby consents to all of the terms and provisions of this Amendment.

IN WITNESS WHEREOF, the undersigned, acting through its duly authorized officers, has

ed this Consent to be executed and sealed this 25 day of March, 1995.

Signed, sealed and delivered in our  
BANK, N.A.  
presence this the 25 day of  
March, 1995.

FIDELITY NATIONAL

By: \_\_\_\_\_  
Witness  
Sr. Vice President

Al Facchinetti,

Attest: \_\_\_\_\_  
Notary Public  
My commission expires:  
Title: \_\_\_\_\_

[NOTARY SEAL]

[SEAL]

**SECOND AMENDMENT TO DECLARATION OF COVENANTS,  
RESTRICTIONS AND EASEMENTS FOR LOST FORREST SUBDIVISION**

This Second Amendment to the Declaration of Covenants, Restrictions and Easements for Lost Forrest Subdivision (the "Second Amendment"), made this the \_\_\_ day of September, 1995, by Lost Forrest Development, Inc., a Georgia Corporation ("Declarant"):

**WITNESSETH, that:**

WHEREAS, Declarant is the developer of Lost Forrest Subdivision; and

WHEREAS, Lost Forrest Subdivision is subject to certain protective covenants, which were filed January 5, 1995 and recorded at Deed Book 8666, Page 390 of the records of the Superior Court of Cobb County, Georgia, and as amended by that certain First Amendment to Declaration of Covenants, filed March 29, 1995 and recorded at Deed Book 8790, Page 98, Cobb County, Georgia records (collectively the "Declaration"); and

WHEREAS, Declarant is also the owner of that certain real estate known as The Park at Lost Forrest, which is more particularly described upon the attached Exhibit

“A” (“The Park at Lost Forrest Property”); and

WHEREAS, Declarant is also the owner of that certain real estate known as Lost Forrest Place, which is more particularly described upon the attached Exhibit “B” (“Lost Forrest Place Property”); and

WHEREAS, Declarant desires to extend the protection, benefits and obligations incident to the use of the common areas of Lost Forrest Subdivision, along with membership in the homeowners’ association known as Lost Forrest Homeowners’ Association, Inc. to the residents of The Park at Lost Forrest and the residents of Lost Forrest Place; and

WHEREAS, Declarant is permitted to annex additional property pursuant to Section 10.1, as amended, of the Declaration;

NOW THEREFORE, Declarant does hereby declare:

All of the Park at Lost Forrest Property and the Lost Forrest Place Property shall be held, sold and conveyed subject to the Declaration. The Declaration shall run with The Park at Lost Forrest Property and the Lost Forrest Place Property, be binding upon all parties having any right, title, or interest in The Park at Lost Forrest Property and the Lost Forrest Place Property or any part thereof, and shall, subject to the limitations contained herein, inure to the benefit of all subsequent owners of The Park at Lost Forrest Property and Lost Forrest Place Property, along with their heirs, grantees, distributees, successors and assigns and to the benefit of the Association.

The Park at Lost Forrest Property and the Lost Forrest Place Property shall be subject to all of the provisions, responsibilities and obligations of the Declaration in the same manner as is the real estate defined in Section 1.14 of the Declaration.

The Declaration is amended by adding the following Sections to Article 11:

Agreements. Subject to the prior approval of Declarant (so long as Declarant owns any property for development and/or sale in the Property or has the right to unilaterally annex additional property to the Property) all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Property or the privilege of possession and enjoyment of any part of the Property.

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

Indemnification. To the fullest extent allowed by applicable Georgia law, the Association shall indemnify every officer and director against any and all expenses, including, without limitation, attorney’s fees, imposed upon or reasonably incurred by any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which such officer or director may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment,

negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled.

Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by Members holding at least seventy-five (75%) percent of the total votes in the Association, provided however, during any period in which Declarant has the right to appoint and remove officers and directors of the Association, such proceeding must be approved in writing by Declarant. This Section shall not apply, however, to: (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided in Article 4 hereof, (c) proceedings involving challenges to *ad valorem* taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made by the Declarant pursuant to Article 9, or is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Except where otherwise defined in this Second Amendment, all terms shall have the same meaning as they do in the Declaration.

All other terms, conditions, easements and restrictions in the Declaration shall remain in full force and effect.

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

Signed, sealed and delivered in our  
DEVELOPMENT, INC.  
presence this the \_\_\_ day of October, 1995.

LOST FORREST

By: \_\_\_\_\_  
Witness  
Williams, President

B. Wilmont

Attest: \_\_\_\_\_  
Notary Public  
Secretary  
My commission expires:

Secretary/Assistant

[NOTARY SEAL]  
SEAL]

[CORPORATE

**ALL THAT TRACT OR PARCEL OF LAND** lying and being in Land Lot 545 of the 16th District, 2nd Section of Cobb County, Georgia, and being more particularly described as follows:

**TO FIND THE TRUE POINT OF BEGINNING**, commence at the corner common to Land Lots 536, 537, 544 and 545, aforesaid district and section; run thence in a westerly direction along the line common to Land Lots 536 and 545 North 89 degrees 54 minutes 17 seconds West a distance of 614.44 feet to a nail set, said nail set being the **TRUE POINT OF BEGINNING. FROM SAID TRUE POINT OF BEGINNING AS THUS ESTABLISHED** and leaving said land lot line, run South 01 degree 43 minutes 23 seconds East a distance of 1,176.84 feet to an iron pin set located on the northern right-of-way line of Post Oak Tritt Road (having a 50-foot right-of-way width); run thence along said northern right-of-way line in a generally westerly direction the following courses and distances: along the arc of a 20,341.06-foot radius curve an arc distance of 108.37 feet to a point (said arc being subtended by a chord having a bearing of North 85 degrees 07 minutes 10 seconds West and a length of 108.37 feet); North 84 degrees 58 minutes 01 second West a distance of 238.74 feet to a point; along the arc of a 825.00-foot radius curve an arc distance of 225.97 feet to a point (said arc being subtended by a chord having a bearing of South 87 degrees 11 minutes 11 seconds West and a length of 225.26 feet); and along the arc of a 672.46-foot radius curve an arc distance of 87.25 feet to a point (said arc being subtended by a chord having a bearing of South 76 degrees 10 minutes 18 seconds West and a length of 87.19 feet); thence leaving said right-of-way line run North 00 degrees 45 minutes 39 seconds East a distance of 829.01 feet to an iron pin found; thence South 89 degrees 59 minutes 46 seconds East a distance of 172.00 feet to an iron pin found; thence North 00 degrees 40 minutes 54 seconds East a distance of 350.00 feet to an iron pin found located on the line common to Land Lots 536 and 545, aforesaid district and section; run thence along common land lot line in an easterly direction South 89 degrees 53 minutes 11 seconds East a distance of 432.89 feet to a nail set, said nail set being the **TRUE POINT OF BEGINNING.**

The above-described property is shown as Tract 1

containing 15.347 acres on that certain Survey for B. Wilmont Williams prepared by David Barton, Georgia Registered Land Surveyor No. 2533, Barton Surveying, Inc., dated April 12, 1995, last revised May 24, 1995, which said survey is incorporated herein by reference and made a part of this description.

## EXHIBIT "A"

**ALL THAT TRACT OR PARCEL OF LAND** lying and being in Land Lots 545, 608, 609 and 617 of the 16th district, 2nd Section of Cobb County, Georgia, and being more particularly described as follows:

**BEGINNING** at a point located on the southern right-of-way of Post Oak Tritt Road (having a 50-foot right-of-way width) where said southern right-of-way line is intersected by the line common to Land Lots 608 and 609, aforesaid district and section; running thence in a generally easterly direction along said southern right-of-way line the following courses and distances: along the arc of a 5,151.51-foot radius curve an arc distance of 233.67 feet to a point (said arc being subtended by a chord having a bearing of South 87 degrees 47 minutes 54 seconds East and a length of 233.65 feet), and South 89 degrees 05 minutes 32 seconds East a distance of 435.56 feet to an iron pin found; thence leaving said right-of-way line, run South 00 degrees 29 minutes 56 seconds West a distance of 1,259.81 feet to an iron pin found located on the line common to Land Lots 609 and 616, aforesaid district and section; run thence along said common land lot line North 87 degrees 00 minutes 13 seconds West a distance of 662.11 feet to an iron pin found located at the corner common to Land Lots 608, 609, 616, and 617, aforesaid district and section; run thence along the line common to Land Lots 616 and 617 South 02 degrees 53 minutes 07 seconds West a distance of 228.32 feet to an iron pin found; run thence North 88 degrees 47 minutes 43 seconds West a distance of 429.52 feet to an iron pin found; run thence North 06 degrees 30 minutes 55 seconds West a distance of 252.40 feet to an iron pin found located on the line common to Land Lots 608 and 617, aforesaid district and section; run thence along said common land lot line North 89 degrees 05 minutes 53 seconds West a distance of 232.35 feet to an iron pin set; thence leaving said common land lot line run North 00 degrees 11 minutes 47 seconds East a distance of 1,258.91 feet to a point located on the southern right-of-way line of Post Oak Tritt Road; run thence in a generally easterly direction along said southern right-of-way line the following courses and distances: South 84 degrees 58 minutes 01 second East a distance of 11.98 feet to a point, along the arc of a 20,391.06-foot radius curve an arc distance of 242.46 feet to a

point (said arc being subtended by a chord having a bearing of South 88 degrees 18 minutes 27 seconds East and a length of 242.46 feet), along the arc of a 20,391.06-foot radius curve an arc distance of 60.76 feet to a point (said arc being subtended by a chord having a bearing of South 85 degrees 44 minutes 01 second East and a length of 60.76 feet), South 85 degrees 49 minutes 08 second a distance of 326.23 feet to a point, and along the arc of a 5,151.51-foot radius curve an arc distance of 61.27 feet to a point (said arc being subtended by a chord having a bearing of South 86 degrees 09 minutes 52 seconds East and a length of 61.27 feet), said point being the **POINT OF BEGINNING**.

The above-described property is shown as Tract 2 containing 20.00, Tract 3 containing 19.066 acres, Tract 4 containing 2.466 acres and Tract 6 containing 0.045 acres on that certain Survey for B. Wilmont Williams prepared by David Barton, Georgia Registered Land Surveyor No. 2533, Barton Surveying, Inc., dated April 12, 1995, last revised May 24, 1995, which said survey is incorporated herein by reference and made a part of this description.

## **EXHIBIT "B"**

### **THIRD AMENDMENT TO THE DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR LOST FORREST SUBDIVISION**

THIS THIRD AMENDMENT TO THE DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR LOST FORREST SUBDIVISION ("Third Amendment") is made this 5 day of August, 1996, by Lost Forrest Development, Inc., a Georgia corporation (the "Declarant").

#### **WITNESSETH**

WHEREAS, on January 5, 1995, Declarant filed that certain Declaration of Covenants, Restrictions and Easements for Lost Forrest Subdivision ("Declaration") which was recorded in Deed Book 8666, Page 0390 in the Public Records of Cobb County, Georgia; and

WHEREAS, the Declaration has been amended by the First Amendment to the Declaration of Covenants, Restrictions and Easements for Lost Forrest Subdivision, recorded on March 29, 1995, in Deed Book 8790, Page 0098 in the aforesaid Public Records, and by the Second Amendment to the Declaration of Covenants, Restrictions

and Easements for Lost Forrest Subdivision, recorded on October 31, 1995, in Deed Book 9209, Page 0012 in the aforesaid Public Records; and

WHEREAS, in accordance with Section 10.1 of the Declaration, Declarant may unilaterally subject additional property to the Declaration for so long as the Declarant has the authority to appoint and remove Directors and Officers of the Association by recording an amendment to the Declaration describing the property to be subjected to the Declaration and the Declarant's intention that it be annexed to the Declaration; and

WHEREAS, the property described on Exhibit "A" to this Third Amendment is property which may be unilaterally submitted by the Declarant to the Declaration; and

WHEREAS, the Declarant hereby expresses its intent to annex to the Declaration the property described on Exhibit "A," less and except the property described on Exhibit "B" as provided herein; and

WHEREAS, this Third Amendment is recorded within the period in which the Declarant has the authority to appoint and remove Directors and Officers of the Association.

NOW, THEREFORE, pursuant to the powers retained by Declarant under the Declaration, Declarant hereby:

1. Submits the property described on Exhibit "A," less and except the property described on Exhibit "B" as set forth in paragraph 2, to the Declaration, as amended. Such property shall be sold, transferred, used, conveyed, occupied, and mortgaged or otherwise encumbered pursuant to the provisions of the Declaration, as amended and supplemented from time to time, which shall run with the title to such property and shall be binding upon all persons having any right, title, or any interest in such property, their respective heirs, legal representatives, successors, successors-in-title, and assigns.

2. Submits the property described on Exhibit "B" for the limited purposes of subjecting such property to the architectural control provisions set forth in Article 5 of the Declaration, the general covenants and restrictions set forth in Article 6 of the Declaration, and the enforcement provisions set forth in Article 8 of the Declaration. The owner of the property described on Exhibit "B" shall not be a member of the Association, shall not be entitled to vote on Association matters, shall not be subject to annual assessments, and shall not share in the rights, privileges, and amenities of the Association unless the Owner consents by written, recorded instrument to membership in the Association.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Third Amendment this 5 day of August, 1996.

DECLARANT: LOST FORREST DEVELOPMENT, INC., a  
Georgia Corporation [SEAL]

BY: \_\_\_\_\_

B. Wilmont Williams, President

st: \_\_\_\_\_  
Secretary

[CORPORATE SEAL]

Signed, sealed and delivered  
this 5 day of August 1996 in the presence of

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_  
[AFFIX NOTARY SEAL]

**CONSENT OF LENDER**

The Undersigned Lender hereby consents and subordinates its interests to the terms of this Third Amendment to the Declaration of Covenants, Restrictions and Easements for Lost Forrest Subdivision.

In Witness Whereof, the undersigned, acting through its duly authorized officers, has caused this Consent to be executed and sealed this 6th day of August 1996.

LENDER: SMYRNA BANK AND TRUST [SEAL]

By: \_\_\_\_\_

Attest: \_\_\_\_\_

[SEAL]

Signed, sealed, and delivered  
this 6th day of August 1996 in the presence of

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
NOTARY  
PUBLIC  
My Commission Expires: \_\_\_\_\_  
[AFFIX NOTARY SEAL]

EXHIBIT "A"

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 607, 16TH DISTRICT, 2ND SECTION, COBB COUNTY, GEORGIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN IRON PIN AT THE LAND LOT CORNER COMMON TO LAND LOTS 607, 608 617 AND 618, RUN THENCE ALONG THE SOUTH LINE OF LAND LOT 607 N 89 DEGREES 18 MINUTES 16 SECONDS W 377.81 FEET TO AN IRON PIN; THENCE N 48 DEGREES 30 MINUTES 12 SECONDS W 502.21 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF POST OAK TRITT ROAD (25 FEET FROM CENTERLINE); THENCE NORTHEASTERLY ALONG SAID RIGHT OF WAY N 39 DEGREES 35 MINUTES 42 SECONDS E 315.42 FEET TO A POINT; THENCE CONTINUING ALONG SAID RIGHT OF WAY N 39 DEGREES 47 MINUTES 45 SECONDS E 427.67 FEET TO AN IRON PIN; THENCE S 50 DEGREES 22 MINUTES 46 SECONDS E 375.32 FEET TO AN IRON PIN ON THE EAST LINE OF LAND LOT 607; THENCE ALONG SAID LAND LOT LINE S 00 DEGREES 53 MINUTES 08 SECONDS W 566.87 FEET TO AN IRON PIN; THENCE CONTINUING ALONG SAID LAND LOT LINE S 00 DEGREES 39 MINUTES 13 SECONDS W 102.85 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS 10.460 ACRES, AND IS MORE FULLY DESCRIBED ON A SURVEY BY 2020 SURVEYING COMPANY FOR LOST FORREST DEVELOPMENT, INC. DATED DECEMBER 5, 1994, REVISED JUNE 8, 1996.  
EXHIBIT "B"

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 607, 16TH DISTRICT, 2ND SECTION, COBB COUNTY, GEORGIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN IRON PIN AT THE LAND LOT CORNER COMMON TO LAND LOTS 607, 608, 617 AND 618; RUN THENCE ALONG THE SOUTH LINE OF LAND LOT 607 N 89 DEGREES 18 MINUTES 16 SECONDS W 287.62 FEET TO A POINT; THENCE N 08 DEGREES 00 MINUTES 09 SECONDS W 78.99 FEET TO A POINT; THENCE N 00 DEGREES 54 MINUTES 16 SECONDS W 93.04 FEET TO A POINT; THENCE ALONG A CURVE CONCAVE NORTHWESTERLY, FOLLOWING THE CURVATURE THEREOF, FOR AN ARC DISTANCE OF 57.18 FEET, SAID CURVE HAVING A RADIUS OF 50.00 FEET AND BEING SUBTENDED BY A CHORD OF N 21 DEGREES 31 MINUTES 11 SECONDS E 54.11 FEET TO A POINT; THENCE N 48 DEGREES 45 MINUTES 34 SECONDS E 68.38 FEET TO A POINT; THENCE S 48 DEGREES 08 MINUTES 58 SECONDS E 308.15 FEET TO A POINT ON THE EASTERLY LINE OF LAND LOT 607; THENCE ALONG SAID LAND LOT LINE S 00 DEGREES 39 MINUTES 13 SECONDS W 64.57 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS 1.232 ACRES, SHOWN AS LOT 6 ON A PRELIMINARY PLAT OF "THE GROVE AT LOST FORREST" BY J. LANCASTER ASSOCIATES, INC. DATED JUNE 14, 1996.

**FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR LOST FORREST SUBDIVISION**

THIS FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR LOST FORREST SUBDIVISION ("Fourth Amendment") is made by Lost Forrest Development, Inc., a Georgia corporation (the "Declarant").

**WITNESSETH:**

WHEREAS, on January 5, 1995, Declarant filed that certain Declaration of Covenants, Restrictions and Easements for Lost Forrest Subdivision ("Declaration") which was recorded in Deed Book 8666, Page 0390 in the Public Records of Cobb County, Georgia; and

WHEREAS, the Declaration has been amended by the First Amendment to the Declaration of Covenants, Restrictions and Easements for Lost Forrest Subdivision, recorded on March 29, 1995, in Deed Book 8790, Page 0098 in the aforesaid Public Records, by the Second Amendment to the Declaration of Covenants, Restrictions and Easements for Lost Forrest Subdivision, recorded on October 31, 1995, in Deed Book 9209, Page 0012 in the aforesaid Public Records and by the Third Amendment to the Declaration of Covenants, Restrictions and Easements for Lost Forrest Subdivision, recorded on August 14th, 1996 in Deed Book 9799, Page 0399 in the aforesaid Public Records; and

WHEREAS, the property described on Exhibit "A" to this Fourth Amendment is property which has already been unilaterally submitted by the Declarant to the Declaration by notations and references on the plats for Lost Forrest Subdivision and the plats for the Park at Lost Forrest, Phase II, recorded in the Superior Court of Cobb County, Georgia and/or through the previous amendments to the Declaration, also recorded with the Superior Court of Cobb County, Georgia; and

WHEREAS, the Declarant hereby wishes to clarify the property subject to the Declaration by reference to the final recorded plats which describe the Lots in Lost Forrest and the Common Property conveyed or to be conveyed to the Association; and

WHEREAS, in accordance with Article 9, Section 9.2 of the Declaration, Declarant may unilaterally amend the Declaration for so long as the Declarant has the authority to appoint and remove Directors and Officers of the Association by recording an amendment to the Declaration with the Clerk of the Superior Court of Cobb County, Georgia; and

WHEREAS, this Fourth Amendment is recorded within the period in which the Declarant has the authority to appoint and remove Directors and Officers of the Association.

NOW, THEREFORE, pursuant to the powers retained by Declarant under the Declaration, Declarant hereby amends the Declaration, as amended, to clarify and describe the property which already has been submitted thereto by reference to the final recorded plats attached hereto as Exhibit "A." Such property shall be sold, transferred, used, conveyed, occupied, and mortgaged or otherwise encumbered pursuant to the provisions of the Declaration, as amended, which shall run with the title to such property and shall be binding upon all persons having any right, title, or any interest in such property, their respective heirs, legal representatives, successors, successors-in-title, and assigns.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Fourth Amendment this 31 day of December 1997.

DECLARANT: LOST FORREST DEVELOPMENT, INC.,  
a Georgia Corporation [SEAL]

BY: \_\_\_\_\_

Its: \_\_\_\_\_

Attest: \_\_\_\_\_

Its: \_\_\_\_\_

Signed, sealed and delivered  
this 31 day of December 1997 in the

presence of

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

[AFFIX NOTARY SEAL]

\_\_\_\_\_  
**EXHIBIT "A"**

**Property Submitted to the Declaration**

**A. Lost Forrest Subdivision**

ALL THOSE TRACTS OR PARCELS OF LAND lying and being in Cobb County, Georgia, situated in Land Lot 607, 16th District, 2nd Section, Cobb County, Georgia, and being more particularly described on that certain plat of survey filed of record in Plat Book 164, Page 15 in the Public Records of Cobb County, Georgia, and labeled as Lots 1-39.

**B. The Grove at Lost Forrest**

ALL THOSE TRACTS OR PARCELS OF LAND lying and being in Cobb County, Georgia, situated in Land Lot 607, 16th District, 2nd Section, Cobb County, Georgia, and being more particularly described on that certain plat of survey filed of record in Plat Book 165, Page 63 in the Public Records of Cobb County, Georgia, and labeled as Lots 1-20; provided, however, that Lot 6 is submitted for the limited purposes of subjecting such property to the architectural control provisions set forth in Article 5 of the Declaration, the general covenants and restrictions set forth in Article 6 of the Declaration, and the enforcement provisions set forth in Article 8 of the Declaration; and provided that the Owner of Lot 6 shall not be a member of the Association, shall not be entitled to vote upon Association matters, shall not be subject to annual assessments and shall not share in the rights, privileges, and amenities of the Association, unless the Owner of Lot 6 consents, by written, recorded instrument to membership in the Association.

**C. Lost Forrest Place**

ALL THOSE TRACTS OR PARCELS OF LAND lying and being in Cobb County, Georgia, situated in Land Lot 545, 16th District, 2nd Section, Cobb County, Georgia, and being more particularly described on that certain plat of survey filed of record in Plat Book 165, Page 40 in the Public Records of Cobb County, Georgia, and labeled as Lots 1-34.

**D. The Park at Lost Forrest Phase I**

ALL THOSE TRACTS OR PARCELS OF LAND lying and being in Cobb County, Georgia, situated in Land Lot 545, 608, 609, and 617, 16th District, 2nd Section, Cobb County, Georgia, and being more particularly described on that certain plat of survey

filed of record in Plat Book 168, Page 38 in the Public Records of Cobb County, Georgia, and labeled as Lots 1A-6 and 49-84; and all that property labeled Open Space; and all that property labeled Amenity Area.

**E. The Park at Lost Forrest Phase II**

ALL THOSE TRACTS OR PARCELS OF LAND lying and being in Cobb County, Georgia, situated in Land Lot 608, and 609, 16th District, 2nd Section, Cobb County, Georgia, and being more particularly described on that certain plat of survey filed of record in Plat Book 162, Page 44 in the Public Records of Cobb County, Georgia, and labeled as Lots 7-48.

**FIFTH AMENDMENT TO THE DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR ST FORREST SUBDIVISION**

THIS FIFTH AMENDMENT TO THE DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR LOST FORREST SUBDIVISION (“Fifth Amendment”) is made by the Lost Forrest Homeowners’ Association.

**WITNESSETH:**

WHEREAS, on January 5, 1995, Lost Forrest Development, Inc. filed that certain Declaration of Covenants, Restrictions and Easements for Lost Forrest Subdivision (“Declaration”) which was recorded in Deed Book 8666, Page 0390 in the Public Records of Cobb County, Georgia; and

WHEREAS, the Declaration has been amended by the First Amendment to the Declaration of Covenants, Restrictions and Easements for Lost Forrest Subdivision, recorded on March 29, 1995, in Deed Book 8790, Page 0098 in the aforesaid Public Records, by the Second Amendment to the Declaration of Covenants, Restrictions and Easements for Lost Forrest Subdivision, recorded on October 31, 1995, in Deed Book 9209, Page 0012 in the aforesaid Public Records and by the Third Amendment to the Declaration of Covenants, Restrictions and Easements for Lost Forrest Subdivision, recorded on August 14th, 1996 in Deed Book 9799, Page 0399 in the aforesaid Public Records and by the Fourth Amendment to the Declaration of Covenants, Restrictions and Easements for Lost Forrest Subdivision, recorded on January 12, 1998 in Deed Book 8666, Page 0390, and;

WHEREAS, the Lost Forrest Homeowners’ Association (the “Association”) is permitted to amend the Declaration of Covenants, Restrictions and Easements, pursuant to Section 9.3 of the Declaration; and

WHEREAS, the Association declares that all terms herein shall have the same meaning as they do in the Declaration and that all other terms, conditions, easements and restrictions in the Declaration shall remain in full force and effect; and

NOW, THEREFORE, pursuant to the powers retained by the Association under the Declaration, the Association hereby amends the following Sections of the Declaration, as follows:

1) Section 6.2.1:

6.2.1 Lots shall be used for single-family residences only and for no other purpose; however, certain home business uses are allowed if they do not disturb the community. Acceptable uses are telephone work, standard office work, computer work and certain home businesses that meet the following restrictions:

- a) Is not detectable by sound (such as nail guns, presses or machinery), by sight (such as use of outbuildings, the garage or exterior areas), or by odor (such as solvents, commercial kitchens or noxious chemicals).
- b) Does not involve more than one employee that is not a resident of the home; or frequent visits by customers or clients.
- c) Does not involve commercial trucks or deliveries of materials, other than standard office supplies and express mail.
- d) Does not involve storage or use of hazardous materials or flammables, exterior storage, manufacturing, assembly, expansion of the utility connections to the house or produce trash or refuse in any greater quantities than normal for a household.
- d) For clarification, any business use must also meet the county zoning restrictions or the business is not allowed. Business signs shall not be allowed.
- f) Space in the residence may not be leased or rented, for profit or consideration, to others to operate a business. A resident must be an active participant in the business.

All Residences must have One-Thousand Eight Hundred (1800) square feet or more of heated floor space.

2) Delete all language referenced below:

1.12 " including Declarant"

" If a separate Parcel status is desired, the Declarant ... (through) ...separate parcel or parcels."

2.1 (Entire 2.1 section, sections 2.1.1 through 2.1.6.)

" however, that, during the period when the Declarant... (through) ...By Laws of the Association."

2.5 " without the prior consent of the Declarant"

3.1 " including the execution of a promissory note for the amounts set forth in Subsection 2.1.2 in favor of the Declarant"

3.3.2 (Entire Section)

3.3.7 (Entire Section)

3.8 (Entire 3.8 section, sections 3.8.1 through 3.8.2)

4.8 (Entire Section)

4.11 (Entire Section)

" All costs of operating the ACC may, at the discretion of Declarant, be borne by the Association."

- 5.1.2 " Declarant, or the " ( twice)
- 6.2 " provided -Declarant "
- 6.3 " Declarant or the"
- " Further provided, that the Declarant may . . . (through) . . . development of such Lot or Lots."
- 6.25 " In the event Declarant . . . (through) . . . or sales office."
- 8.3 " of Declarant "
- 9.2 (Entire Section)
- "For so long. . .(through) . . . At the expiration of the Declarant's right . . . (through) . . . Officers of the Association,"
- 10.2 (Entire Section)
- 11.5 "Declarant"
- 11.5(a) (Entire Section)
- 11.5(b) " 4985 Lower Roswell Road, Marietta, Georgia 30068 "
- 11.6 " However, in the event . . .(through) . . . on account thereof."
- 11.8 (Entire Section)

Insert the following in Section 11.5 (b), " P.O. 862086, Marietta, Georgia 30062"

3) Section 6.12:

6.12 Antennae, Etc. No exterior television or radio antennae, satellite dish larger than one meter in diameter, receiver, or solar equipment of any sort shall be placed, allowed or maintained upon any portion of a Structure or Lot without prior written approval by the ACC. The location of satellite dishes one meter in diameter or less shall be submitted in writing to the ACC for approval. No antennae shall be installed or used for the purpose of transmitting electronic signals.

4) Section 9.2:

9.2. Amendments by Board of Directors. The Board of Directors may amend this Declaration 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.

5) Section 11.14:

11.14 Security. The Association shall not have any responsibility to provide security of any kind for Owners.

6) Section 6.23:

6.23 Exterior. ... One neighborhood-wide garage sale per calendar year is permitted with prior approval of the Board of Directors.

IN WITNESS WHEREOF, the undersigned Association has executed this Fifth Amendment this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

DECLARANT: LOST FORREST HOMEOWNERS'  
ASSOCIATION

a Georgia Corporation [SEAL]

BY: \_\_\_\_\_

Its: \_\_\_\_\_

Attest: \_\_\_\_\_

Its: \_\_\_\_\_

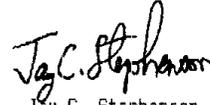
Signed, sealed and delivered  
this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ in the presence of

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

[AFFIX NOTARY SEAL] \_\_\_\_\_



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

*2/15/05*

*RR*

Return to:  
Weissman, Nowack, Curry & Wilco, P.C.  
One Alliance Center  
3500 Lenox Road, 4<sup>th</sup> Floor  
Atlanta, Georgia 30326 (JMH)

STATE OF GEORGIA  
COUNTY OF COBB

Cross Reference: Deed Book 8666  
Page 0390  
Deed Book *14178*  
Page *204*

**SIXTH AMENDMENT TO THE DECLARATION  
OF COVENANTS, RESTRICTIONS AND EASEMENTS  
FOR LOST FORREST SUBDIVISION**

This Sixth Amendment to the Declaration of Covenants, Restrictions and Easements for Lost Forrest Subdivision ("Sixth Amendment") is made this 23 day of June, 2005 by the Lost Forrest Homeowners Association, Inc. ("Association") as follows;

**WITNESSETH:**

WHEREAS, on January 5, 1995, the Declarant filed that certain Declaration of Covenants, Restrictions and Easements for Lost Forrest Subdivision ("Declaration") which was recorded in Deed Book 8666, Page 0390 in the Public Records of Cobb County, Georgia; and

WHEREAS, the Declaration has been amended by the First Amendment to the Declaration of Covenants, Restrictions and Easements for Lost Forrest Subdivision, recorded on March 29, 1995, in Deed Book 8790, Page 0098 in the aforesaid Public Records; by the Second Amendment to the Declaration of Covenants, Restrictions and Easements for Lost Forrest

Subdivision, recorded on October 31, 1995, in Deed Book 9209, Page 0012 in the aforesaid Public Records; by the Third Amendment to the Declaration of Covenants, Restrictions and Easements for Lost Forrest Subdivision, recorded on August 14, 1996 in Deed Book 9799, Page 0398 in the aforesaid Public Records; by the Fourth Amendment to the Declaration of Covenants, Restrictions and Easements for Lost Forrest Subdivision, recorded on January 12, 1998 in Deed Book 10930, Page 537 in the aforesaid Public Records; and by the Fifth Amendment to the Declaration of Covenants, Restrictions and Easements for Lost Forrest Subdivision, recorded on August 25, 2003 in Deed Book 13828, Page 4436 in the aforesaid Public Records;

WHEREAS, Paragraph 9, Section 9.3 of the Declaration provides for amendment of the Declaration by the Association at a duly called meeting, upon resolution of either the Board or a Member or Members of the Association, and upon approval by Members holding at least two-thirds (2/3) of the total votes in the Association; and

WHEREAS, a meeting was held pursuant to Paragraph 9, Section 9.3 of the Declaration and, upon resolution of the Board, Members holding at least two-thirds (2/3) of the total votes in the Association voted to approve the following amendments to the Declaration; and

WHEREAS, this Amendment does not materially and adversely affect the security title and interest of any mortgagee; provided, however, in the event a court of competent jurisdiction determines that any provision of this Amendment affects the security title and interest of any mortgagee, then such particular provisions shall not be binding on the mortgagee so involved, unless said mortgagee consents to that particular provision; and, if such consent is not

forthcoming, then, the provision of the Declaration effective prior to this Sixth Amendment shall control with respect to the affected mortgagee; and

WHEREAS the Declarant no longer has the right to appoint and remove officers and directors of the Association;

WHEREAS, the Owner of the property described and defined herein as The Heritage at Post Oak Subdivision agrees to and consents to the terms of this Amendment and covenants and agrees to bind the Lots in The Heritage at Post Oak Subdivision as set forth herein and as set forth in his Owner's Consent recorded herewith as Exhibit "A";

NOW, THEREFORE, the Declaration is amended as follows:

1.

Paragraph 1, Section 1.5 is hereby amended by deleting the phrase "common use and enjoyment of the Owners" and substituting therefor the phrase "common use and enjoyment of the Owners, Occupants and Recreation Members."

2.

Paragraph 1 is hereby amended by adding the following Section 1.18 thereto:

1.18 "General Member" shall mean and refer to any Owner of a Lot or Residence within the Property.

3.

Paragraph 1 is hereby amended by adding the following Section 1.19 thereto:

1.19 "Recreation Member" shall mean and refer to any person who is or shall be a record owner by purchase, transfer, assignment or foreclosure of a fee or undivided fee interest in a lot and Residence within The Heritage at Post Oak Subdivision who is entitled to use the Common Property within the Property as more particularly provided in Paragraph 3 of this Declaration.

4.

3

Paragraph 1 is hereby amended by adding the following Section 1.20 thereto:

1.20 "The Heritage at Post Oak Declaration" shall mean and refer to all covenants, conditions and restrictions, charges and liens set forth in the legal instruments for The Heritage at Post Oak Subdivision and all amendments thereto filed for record in the records of the Clerk of the Superior Court of Cobb County, Georgia records and, in particular, to the Declaration of Covenants, Conditions and Restrictions for The Heritage at Post Oak recorded in Deed Book ~~14179~~ Page ~~204~~, of the Cobb County, land records.

5.

Paragraph 1 of the Declaration is hereby amended by adding the following Section 1.21 thereto:

1.21 "The Heritage at Post Oak Subdivision" shall mean and refer to those four (4) tracts or parcels of land described in Exhibit "B" attached hereto and as further described in The Heritage at Post Oak Declaration.

6.

Paragraph 1 of the Declaration is hereby amended by adding the following Section 1.22 thereto:

1.22 "The Heritage at Post Oak Association" shall mean and refer to The Heritage at Post Oak HOA, Inc., a nonprofit corporation existing under the laws of the State of Georgia.

7.

Paragraph 1 of the Declaration is hereby amended by adding the following Section 1.23 thereto:

1.23 "Recreation Assessment" shall mean and refer to each Recreation Member's share of the common expenses, or other charges from time to time, that are assessed against Recreation Members by the Association in the manner provided in this Declaration.

8.

Paragraph 1 is hereby amended by adding the following Section 1.25 thereto:

1.25 "Recreation Facilities" shall mean and refer to the pool, tennis courts, clubhouse and adjoining parking area within the Lost Forrest Property as they exist on the date this Amendment is recorded and as they may be expanded and/or improved in the future.

4

9.

Paragraph 2, Section 2.2 of the Declaration is hereby amended by adding the following sentence to the end thereto:

The Recreation Members shall also have a non-exclusive right and easement to use and enjoy the Recreation Facilities as set forth in this Declaration.

10.

Paragraph 2.6 of the Declaration is hereby amended by adding the following sentence thereto:

Any Recreation Member may delegate to the members of his or her family or his or her tenants who reside on his or her lot in The Heritage at Post Oak Subdivision, in accordance with the By-Laws, subject to the terms and conditions of this Declaration, his or her right to use and enjoy the Recreation Facilities.

11.

Paragraph 3, Section 3.2 of the Declaration is hereby amended by deleting that Section in its entirety and substituting therefor the following:

3.2 Association Membership.

3.2.1 General Membership. Every Owner shall automatically be a General Member of the Association and such membership shall terminate only as provided in this Declaration. Membership shall be appurtenant to and may not be separated from ownership of any Lot or Residences, and said ownership of a Lot or Residence shall be the only qualification for such membership.

3.2.2 Recreation Membership. Every owner of a lot and residence in The Heritage at Post Oak Subdivision shall be deemed to have a Recreation Membership in the Association. Recreation Membership shall be mandatory. Recreation Membership shall be appurtenant to and may not be separated from ownership of any lot or residence in The Heritage at Post Oak Subdivision, and said ownership of a lot and residence in The Heritage at Post Oak Subdivision shall be the only qualification for such membership. Provided, however, the developer and builders who own a lot in The Heritage at Post Oak Subdivision shall not be entitled to Recreation Membership unless they are permanently residing in the residence on such lot.

In the event that fee simple title to a lot in The Heritage at Post Oak is transferred or otherwise conveyed, the Recreation Membership in the Association that is appurtenant

thereto shall automatically pass to such transferee, notwithstanding any failure of the transferor to endorse to his or her transferee certificates or other evidences of such Recreation Membership. Recreation Membership is not intended to include mortgagees or any other persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate or otherwise affect an owner's Recreation Membership in the Association. No owner of a lot and residence in The Heritage at Post Oak Subdivision shall have more than one Recreation Membership per lot and residence. In the event of multiple owners of a lot and residence in The Heritage at Post Oak Subdivision rights of use and enjoyment shall be as provided for herein.

Recreation Members shall be entitled to full use and enjoyment of the Recreation Facilities.

12.

Paragraph 4 of the Declaration is hereby amended by adding the following Paragraph

4.14 to the end thereto:

4.14 Recreation Assessments.

4.14.1 Recreation Assessment. Pursuant to The Heritage at Post Oak Declaration, each owner of a lot and residence in The Heritage at Post Oak Subdivision by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, as well as any occupant who resides at the residence, is deemed to covenant and agree to pay to The Association: (1) the Recreation Assessment, as established and collected as provided in this Section and in The Heritage at Post Oak Declaration; (2) special assessments which may be established and collected as provided in this Section and in The Heritage at Post Oak Declaration; and (3) any individual or specific assessments against any particular lot and residence which is established pursuant to this Section and The Heritage at Post Oak Declaration. The Board of Directors shall establish annually the annual Recreation Assessment that shall be levied equally against each lot in The Heritage at Post Oak Subdivision and shall notify the Recreation Members of the amount of the assessment at least thirty (30) days prior to the due date.

4.14.2 Obligation to Pay Assessments. Pursuant to The Heritage at Post Oak Declaration, each Recreation Member shall be responsible for paying the Recreation Assessment due for his or her lot to the Association. Each Recreation Member shall pay the Recreation Assessment due on or before January 1 of each year. If any such assessments are not paid by any Recreation Member to the Association, the delinquent Recreation Member shall be responsible for late charges in the amount of ten percent (10%) of the total assessment due, simple interest at the rate of eighteen percent (18%) per annum, and court costs and attorney's fees actually incurred by the Association to enforce or collect the assessments due. Until all lots in The Heritage at Post Oak Subdivision are sold to Recreation Members, the annual dues shall be prorated and assessed only against

those homes sold to Recreation Members. The Association shall have a charge and continuing lien on each lot for which any Recreation Member fails to pay any assessment due hereunder which lien shall have the same priority as set forth in Article IV, Section 4.1 of this Declaration and for which there will be the same effect on nonpayment as set forth in Article IV, Section 4.9 of this Declaration.

4.14.3 Special Assessments. Pursuant to this Declaration and The Heritage at Post Oak Declaration, in addition to the annual Recreation Assessment, the Association and The Heritage at Post Oak Association, acting through the Association's Board of Directors, may levy, in any assessment year, special assessments for the maintenance, operation and repair of the Recreation Facilities with the approval of a majority of the votes of the Owners who are voting in person or by proxy at a meeting duly called for this purpose with a quorum of the Owners being present. Special assessments shall be prorated among the lots and Residences equally within the Lost Forrest Subdivision and The Heritage at Post Oak Subdivision as provided with respect to annual Recreation Assessments. Each Recreation Member shall pay to the Association the special assessments levied against his or her lot in The Heritage at Post Oak Subdivision. The Association shall have a charge and continuing lien on each lot for which any Recreation Member fails to pay any special assessment due hereunder which lien shall have the same priority as set forth in Article IV, Section 4.1 of this Declaration and for which there will be the same effect on nonpayment as set forth in Article IV, Section 4.9 of this Declaration. The Recreation Members shall not be entitled to vote on special assessments.

4.14.4 Individual Assessments. Pursuant to The Heritage at Post Oak Declaration, any expenses for the Recreation Facilities occasioned by the conduct of less than all of the Recreation Members or by the family, tenants, agents, guests, or invitees of any Recreation Member shall be specially assessed against such Recreation Member and their respective lot and Residence in The Heritage at Post Oak Subdivision. Such individual assessment shall be levied by the Board of Directors to the Recreation Member and the amount and date of such assessment so levied shall be specified by the Board. The Association shall have a charge and continuing lien on each lot for which any Recreation Member fails to pay any individual assessment due hereunder, which lien shall have the same priority as set forth in Article IV, Section 4.1 of this Declaration and for which there will be the same effect on nonpayment as set forth in Article IV, Section 4.9 of this Declaration.

4.14.5 Notice of Meeting and Quorum. The notice of any meetings with the Recreation Members and quorum requirements shall be in accordance with this Section and the Association's Bylaws.

4.14.6 Membership List. Pursuant to The Heritage at Post Oak Declaration, The Heritage at Post Oak Association shall provide a complete list of all owners of lots and residences in The Heritage at Post Oak Subdivision to the Association on or before November 1<sup>st</sup> of each year. In addition, within 30 days of any subsequent sale

or transfer of any lot in The Heritage at Post Oak Subdivision, The Heritage at Post Oak Association shall provide notice of the sale or transfer and the new owners' name(s) to the Association.

4.14.7 Suspension of Membership. Pursuant to this Section, in the event that any Recreation Member fails or refuses to pay his or her Recreation Assessment or any special or individual assessments levied pursuant to this Declaration, the Board of Directors shall have the right to suspend such Recreation Member's rights and privileges to use and enjoy the Recreation Facilities, including the rights and privileges of such member's guests, family, tenants or occupants to use the Recreation Facilities.

13.

Paragraph 8 of the Declaration is hereby amended by adding the following Section 8.6 to the end thereto:

8.6 Recreation Member Enforcement. Each Recreation Member shall comply strictly with the By-Laws, the published rules and regulations of the Association adopted pursuant to this Declaration, as either of the same may be lawfully amended, and with the covenants, conditions and restrictions herein that relate to or regard the Recreation Facilities, the Recreation Assessments or the Recreation Membership in general. In the event that any Recreation Member violates the By-Laws, the rules and regulations or said covenants, conditions and restrictions, the Association shall have all powers of enforcement against such Recreation Member as set forth in this Section hereinabove.

Except as specifically provided for herein, the terms and conditions of this Declaration and the Lost Forrest By-Laws shall not apply to Recreation Members and The Heritage at Post Oak Association.

14.

Except as stated herein, the terms and provisions of the Declaration shall remain unchanged and shall continue with full force and effect.

IN WITNESS WHEREOF, the undersigned officers of Lost Forrest Homeowners Association, Inc., hereby certify that the above Sixth Amendment to the Declaration was duly adopted by the required percentage of the Association's membership.

This 23 day of June, 2005

LOST FORREST HOMEOWNERS

ASSOCIATION, INC.

By: Richard L. Sathni [SEAL]  
President

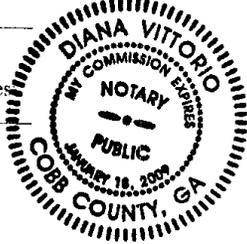
Attest: [Signature] [SEAL]  
~~Secretary~~  
vice president  
[CORPORATE SEAL]

Sworn to and subscribed to  
before me this 27<sup>th</sup> day of  
June, 2008.

[Signature]  
Witness  
[Signature]  
Notary Public

My Commission Expires  
1/8/09

[NOTARY SEAL]



427240226 00061001

Deleted:

**EXHIBIT "A"**

OWNER CONSENT TO BIND PROPERTY  
TO SIXTH AMENDMENT TO THE DECLARATION  
OF COVENANTS, RESTRICTIONS AND EASEMENTS  
FOR LOST FORREST SUBDIVISION

THIS CONSENT is made and entered into on this 24 day of June, 2005

WITNESSETH

WHEREAS, there is recorded that certain Declaration of Covenants, Restrictions and Easements for Lost Forrest Subdivision ("Declaration") in Deed Book 8666, Page 390 in the Cobb County, Georgia land records; and

WHEREAS, the undersigned owner, Post Oak Tritt Investors, LLC. (hereinafter referred to as "Owner"), is the record Owner and holder of title in fee simple to the property known as The Heritage at Post Oak Subdivision which is more specifically described in Exhibit "B" attached hereto and further described in the Declaration of Covenants, Conditions and Restrictions for The Heritage at Post Oak recorded in Deed Book 14178 Page 204, of the Cobb County, land records (hereinafter referred to as "Owner's Property"); and

WHEREAS, Owner desires to submit Owner's Property to the terms and conditions of the Sixth Amendment to the Declaration;

NOW, THEREFORE, Owner hereby consents to the filing of the attached Sixth Amendment to the Declaration and in doing so expressly consents, on behalf of Owner, Owner's successors, heirs, and assigns, that from and after the date of this Consent, Owner's Property shall be owned, transferred, sold, conveyed, used, occupied, mortgaged, or otherwise encumbered subject to the terms, provisions, covenants, conditions, and restrictions contained in the Sixth Amendment to the Declaration now or as hereafter may be amended, all of which shall run with the title to Owner's Property and shall be binding upon all persons having any right, title, or interest in Owner's Property, their respective heirs, legal representatives, successors, successors-in-title, and assigns.

IN WITNESS WHEREOF, this Consent has been executed under seal on the day and year first above written.

Post Oak Tritt Investors, LLC  
By [Signature]  
Title member

Sworn to and subscribed before me  
this 24<sup>th</sup> day of June  
2005.

[Signature]  
Witness

[Signature]  
Notary Public



[NOTARY SIGNATURE]

By: [Signature]  
President

Attest: [Signature]  
Secretary

Treasurer  
[CORPORATE SEAL]



**EXHIBIT "B"**

**LEGAL DESCRIPTION OF  
THE HERITAGE AT POST OAK SUBDIVISION**

All that tract or parcel of land lying and being in Land Lot 607, 16th District, 2nd Section, Cobb County, Georgia, and being The Heritage at Post Oak Subdivision as per final plat of survey for The Heritage at Post Oak, dated 12/23/94, last revision dated January 10, 2005, prepared by Sirron Group Engineering, LLC, James A. Evans, Jr., recorded in Plat Book 231 Page 10, Superior Court Records, Cobb County, Georgia, said plat being incorporated herein by reference for a complete description of said property.

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

3  
14

Return to:  
Weissman, Nowack, Curry & Wilco, P.C.  
One Alliance Center  
3500 Lenox Road, 4<sup>th</sup> Floor  
Atlanta, Georgia 30326 (JMH)

MAIL

STATE OF GEORGIA  
COUNTY OF COBB

Cross Reference: Deed Book 8666  
Page 0390

**AMENDMENT TO THE DECLARATION  
OF COVENANTS, RESTRICTIONS AND EASEMENTS  
FOR LOST FORREST SUBDIVISION**

WHEREAS, the Declaration of Covenants, Restrictions and Easements for Lost Forrest Subdivision was recorded on January 5, 1995, in Deed Book 8666, Page 0390, *et seq.*, Cobb County, Georgia Records ("Declaration"), as amended; and

WHEREAS, Paragraph 9, Section 9.3 of the Declaration provides for amendment of the Declaration by the Association at a duly called meeting, upon resolution of either the Board or a Member or Members of the Association, and upon approval by Members holding at least two-thirds (2/3) of the total votes in the Association; and

WHEREAS, a duly called meeting was held pursuant to Paragraph 9, Section 9.3 of the Declaration and, upon resolution of the Board, Members holding at least two-thirds (2/3) of the total votes in the Association voted to approve the following amendment to the Declaration; and

WHEREAS, this Amendment does not materially and adversely affect the security title and interest of any mortgagee; provided, however, in the event a court of competent jurisdiction determines that any provision of this Amendment affects the security title and interest of any mortgagee, then such particular provisions shall not be binding on the mortgagee so involved, unless said mortgagee consents to that particular provision; and, if such consent is not forthcoming, then, the provision of the Declaration effective prior to this Amendment shall control with respect to the affected mortgagee; and

WHEREAS the Declarant no longer has the right to appoint and remove officers and directors of the Association;

NOW, THEREFORE, the Declaration is hereby amended as follows:

Paragraph 4 of the Declaration is hereby amended by adding the following Section 4.15 to the end thereto:

**4.15 Capital Contribution Assessment.** Commencing 60 days after the date on which this Amendment is recorded in the Cobb County, Georgia land records (the "Effective Date"), in addition to the annual and all other assessments and charges provided for herein, the purchaser or grantee of every Residence shall be assessed and be subject to a non-refundable, non-prorated capital contribution assessment ("Capital Contribution Assessment") upon any and each conveyance or transfer of the Residence to any person or entity other than to: (i) the spouse of the Owner; (ii) the heir of a deceased Owner; or (iii) a mortgagee who takes title to a Residence through foreclosure of such mortgage or deed in lieu of foreclosure of such mortgage. The Capital Contribution Assessment shall be an amount equal to the annual assessment applicable to such Residence at the time of such conveyance or transfer.

The Capital Contribution Assessment shall not constitute an advance payment of the annual assessment. The Capital Contribution Assessment shall constitute a specific special assessment against such Residence, a continuing lien against such Residence, and a personal obligation of the Owner of such Residence.

Except as stated herein, the terms and provisions of the Declaration shall remain unchanged and shall continue with full force and effect.

IN WITNESS WHEREOF, the undersigned officers of Lost Forrest Homeowners Association, Inc., hereby certify that the above Amendment to the Declaration was duly adopted by the required percentage of the Association's membership.

This 20<sup>th</sup> day of May 2007

LOST FORREST HOMEOWNERS  
ASSOCIATION, INC.

By: \_\_\_\_\_ [SEAL]  
President  
Attest: Patricia C. Pennek [SEAL]  
Secretary

[CORPORATE SEAL]

Sworn to and subscribed to  
before me this 20<sup>th</sup> day of  
May, 2007

[Signature]  
Witness

[Signature]  
Notary Public

My Commission Expires  
GEORGIA  
NOV. 3, 2007

[NOTARY SEAL]  
COBB COUNTY