

RETURN TO:  
HALL, BLOCH, GARLAND & METZGER  
P.O. BOX 5088  
MARIETTA, GA 30153

RECEIVED  
CLERK OF SUPERIOR COURT  
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS AND EASEMENTS FOR WESTCHESTER HILLS SUBDIVISION  
2013 MAY 15 11 11 AM

SUPERIOR COURT OF  
CLERK OF SUPERIOR COURT  
2013 MAY 15 11 11 AM  
DEKALB COUNTY, GEORGIA

THIS DECLARATION, made this 30<sup>th</sup> day of April, 1996, by WESTCHESTER HILLS, LLC, a Georgia limited liability company (hereinafter the "Developer").

WITNESSETH:

WHEREAS, Developer is the owner of certain real property, which real property is more particularly described in Exhibit "A" attached hereto and by reference made a part hereof; and

WHEREAS, Developer desires to provide for the preservation and enhancement of the property values in Westchester Hills and for the maintenance of the property and improvements thereon, and to this end desires to subject the property described in Exhibit "A" to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Developer has deemed it desirable, for the efficient preservation of the values in Westchester Hills, to create an agency to which should be delegated and assigned the powers of owning, maintaining and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

NOW, THEREFORE, Developer declares that the real property described in Exhibit "A" and any additional property as may be subsequent amendment hereto be added to and subjected to this Declaration shall be held, transferred, sold, mortgaged, conveyed, leased, occupied and used subject to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth.

ARTICLE I  
DEFINITIONS

Section 1. "Architectural Control Committee" shall mean and refer to James H. Daws, Jeffery S. Tucker, and Russell Wynn, or such other individuals as Developer may appoint, until all lots in Westchester Hills shall have been fully developed and permanent improvements constructed thereon and sold to permanent residents; at which time such term shall mean and refer to those persons selected annually by the Owners in compliance with the by-laws of the Association to serve as members of said committee.

Section 2. "Association" shall mean and refer to Westchester Hills Homeowners Association, Inc., a non-profit corporation organized and existing under the laws of the State of Georgia.

Section 3. "Board" shall mean and refer to the Board of Directors of the Association.

Section 4. "Common Area" shall mean all real and personal property now or, hereafter owned by the Association for the common use and enjoyment of the Owners.

Section 5. "Common Expenses" shall mean and refer to the actual and estimated expenses of operating the Association, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration and the By-laws and Articles of Incorporation of the Association.

Section 6. "Declaration" shall mean the covenants, conditions, restrictions and easements and all other provisions herein set forth in this entire document, as may from time to time be amended.

Section 7. "Developer" shall mean and refer to Westchester Hills, LLC, a limited liability company organized and existing under the laws of the State of Georgia.

Section 8. "Lot" shall mean and refer to any parcel of land shown upon any recorded subdivision plat of the Property upon which single-family residence may be constructed.

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

Section 10. "Person" shall mean and refer to a natural person, corporation, partnership, association, trust or other legal entity, or any combination thereof.

Section 11. "Plat" shall mean and refer to that certain Final Subdivision Plat for Westchester Hills.

Section 12. "Property" shall mean and refer to that certain real property described in Exhibit "A" attached hereto and by reference made a part hereof, together with such additional real property as may by subsequent amendment be added to and subjected to this Declaration.

Section 13. "Structure" shall mean and refer to: (i) any thing or object, the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration and not limitation, any building or part thereof, garage, porch, gazebo, shed,

greenhouse or bathroom, coop or cage, covered or uncovered patio, swimming pool, tennis court, fence, curbing, paving, wall, tree, shrub, sign, signboard, mailbox, driveway, temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such Lot; (ii) any excavation, grading, fill ditch, diversion dam or other thing, object or device which affects or alters the natural flow or surface waters from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial creek, stream, wash or drainage channel from, upon or across any Lot; and (iii) any change in grade at any point on a Lot of more than six (6) inches, whether or not subsection (ii) of this Section 13 applies to such change.

Section 14. "Westchester Hills" shall mean and refer to the name of the residential subdivision contained in the Property and subject to the terms and conditions hereof.

## ARTICLE II ARCHITECTURAL CONTROL COMMITTEE

Section 1. Purpose, Powers and Duties of the Architectural Control Committee. The purpose of the Architectural Control Committee is to assure that the installation, construction or alteration of any Structure on any Lot is submitted to the Architectural Control Committee 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 development of the Property; 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 Architectural Control Committee shall have all of the powers and duties to do each and every thing necessary, suitable, convenient or proper for, or in connection with or incidental to, the accomplishment of such purpose, including, without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any structure on any Lot.

Section 2. Action of Members of the Architectural Control Committee. Any member of the Architectural Control Committee may be authorized by the Architectural Control Committee to exercise the full authority of the Architectural Control Committee with respect to all matters over which the Architectural Control Committee has authority as may be specified by resolution of the Architectural Control Committee. The action of such member with respect to the matters specified shall be final and binding upon the Architectural Control Committee and upon any applicant for an approval permit or authorization.

Section 3. Submission of Plans and Specifications. No Structure shall be commenced, erected, placed, moved onto or permitted to remain on any Lot, nor shall any existing Structure upon any Lot be altered in any way which materially changes the exterior appearance of the Structure or Lot, unless plans and specifications therefore shall have been

first submitted to and approved in writing by the Architectural Control Committee. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the Architectural Control Committee, including, without being limited to:

- (a) A site plan showing the location of all proposed and existing Structures on the Lot, including building setbacks, open space, driveways, walkways and parking spaces, including the number thereof;
- (b) Floor plans;
- (c) exterior elevations of all proposed Structures and alterations to existing structures, as such structures shall appear after all back-filling and landscaping are completed;
- (d) specifications showing the nature, kind, shape, height, materials, basic exterior finishes and colors of all proposed Structures and alterations to existing Structures, and also showing front, side and rear elevations thereof; and
- (e) plans for landscaping and grading.

Section 4. Approval and Disapproval of Plans and Specifications. (a) The Architectural Control Committee shall have the right to approve or disapprove any plans and specifications submitted to it in its sole and uncontrolled discretion, which approval or disapproval may be based upon any grounds, including purely aesthetic considerations which shall be deemed sufficient. Said Architectural Control Committee shall have thirty (30) days from the submission of all plans as set forth in Section 3 hereof in which to approve said plans. Should the Architectural Control Committee take no action prior to the expiration of said thirty (30) day period, then the plans will be deemed approved.

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

(c) Neither Developer nor any member of the Architectural Control Committee shall be responsible or liable in any way for the defects in any plans or specifications approved by the Architectural Control Committee, nor for any structural defects in any work done according to such plans and specifications approved by the Architectural Control Committee. Further, approval of plans and specifications by the Architectural Control Committee shall not be deemed to represent or warrant to any Person the quality, function or operation of the Structure or of any construction, workmanship, engineering, materials or equipment. Neither Developer nor any member of the Architectural Control Committee shall be liable in damages or in any other respect to anyone submitting plans or specifications for approval under this Article, or to any Owner, or to any other Person having an interest in any of the Property by reason of mistake in judgment, negligence, misfeasance or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. By submission of such plans and specifications to the Architectural Control Committee, every Owner of any Lot releases and agrees to indemnify, hold harmless and defend Developer and any member of the Architectural Control Committee from any such alleged liability, claim and/or damage.

Section 5. Right of Inspection. The Architectural Control Committee, its agents and representatives, shall have the right during reasonable hours to enter upon and inspect any Lot or Structures 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 the Architectural Control Committee shall not be deemed to have committed a trespass or other wrongful act solely by reason of such entry or inspection.

Section 6. Violations. (a) 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 Architectural Control Committee pursuant to the provisions of this article, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If in the opinion of the Architectural Control Committee such violation shall have occurred, the Architectural Control Committee shall be entitled and empowered to enjoin or remove any such construction. Any costs and expenses incurred by the Architectural Control Committee in enjoining and/or removing any construction or improvements shall be added to and become a part of the assessment to which the Owner and his Lot are subject.

(b) The Architectural Control Committee 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 twenty (20) days after the mailing of the aforesaid notice of violation, then the Architectural Control Committee shall have the right of abatement as provided in Section 1(b) of Article X hereof. In addition to the right of abatement, the Board, upon being informed of such violation by the

Architectural Control Committee, shall be entitled to seek equitable relief to enjoin such construction.

Section 7. Fees. The Architectural Control Committee may impose and collect a reasonable and appropriate fee to cover the cost of inspections performed pursuant to Section 5 hereof. The fee shall be established from time to time by the Architectural Control Committee.

### ARTICLE III. MEMBERSHIP AND VOTING RIGHTS

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

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

(a) Class A. Initially, the Class A members shall be all Owners, with the exception of the Developer, and shall be entitled to one vote for each Lot owned. When more than one Person holds an interest in any Lot, all such Persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

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

- (i) when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership; or
- (ii) seven (7) years from the date of this Declaration is filed of record in the Office of the Clerk of the Superior Court of Bibb County; or
- (iii) when, in its discretion, the Developer so determines.

Section 3. Initial Assessment. Every Person who purchases a Lot in Westchester Hills for use as a permanent personal residence shall pay to the Association the initial assessment fee in an amount determined by the Association at the time of purchase of the Lot; provided, however, said initial assessment fee shall be due from the Person who purchases any Lot or home for use as a permanent residence. The initial assessment shall

be a prepayment of the succeeding twelve months Assessment and shall be prorated over the twelve (12) month calendar year in which it is paid. The Developer shall not be subject to assessment for any Lot owned by Developer.

ARTICLE IV  
PROPERTY RIGHTS

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

(a) the right of the Association to adopt and publish rules and regulations governing the use of the Common Area.

(b) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility now or hereafter located or constructed upon the Common Area and to impose reasonable limits on the number of guests who may use such recreational facilities.

(c) the right of the Association to suspend any Owner's voting rights and rights to use any recreational facilities within the Common Area for any period during which any assessment of the Association against said Owner's Lot remains unpaid.

(d) the right of the Association to borrow money for the purpose of improving the Common Area or any portion thereof, or constructing, repairing or improving any facilities located or to be located thereon and, upon the assent of two-thirds of the Class A and B members, if any, to give as security a mortgage conveying all or any portion of the Common Area. The lien and encumbrances of any such mortgage, however, shall be subject and subordinate to all rights, interests, easements, and privileges herein reserved or established for the benefit of Developer, any Owner, or the holder of any mortgage, irrespective of when executed, given by Developer or any Owner.

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

(f) the easements reserved in Article VIII of this Declaration.

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

Section 3. Title to Common Area. Developer may from time to time convey to the Association, at no expense to the Association, real and personal property for the common use and enjoyment of the Owners. The Association hereby covenants and agrees to accept from Developer all such conveyances of real and personal property. Notwithstanding any legal presumption to the contrary, the fee simple title to such real and personal property, designated as Common Area or for public use, together with all rights therein, shall be reserved to Developer until such time as the real and/or personal property is conveyed to the Association or to any municipality or other governmental body, agency or authority.

Section 4. No Partition. There shall be no judicial partition of the Property or any part thereof, nor shall any Person acquiring any interest in the Property or any part thereof seek any such judicial partition unless the Property has been removed from the provisions of this Declaration.

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

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

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for promoting the health, safety, pleasure and welfare of the Owners of the lots and the costs and expenses incident to the operation of the Association, including, without limitation, the maintenance and repair of the Common Area and improvements thereof, if any, the maintenance of services furnished by the Association, the purchase of insurance by the Association, the repair and replacement of improvements on the Common Area, payment of all taxes, insurance premiums and all costs and expenses incidental to the



operation and administration of the Association, and establishment and maintenance of a reasonable reserve fund or funds.

Section 3. Computation of Annual Assessments. If the Association incurs ongoing Common Expenses, it shall be the duty of the Board at least thirty (30) days prior to the Association's annual meeting to prepare a budget covering the estimated Common Expenses of operating the Association for the coming year, such budget in include a capital contribution of reserve account in accordance with the capital needs of the Association. The budget and the proposed annual assessments to be levied against each Lot shall be delivered to each Owner no later than ten (10) days prior to such annual meeting. The annual assessments shall be equally divided among the Lots so that the annual assessments shall be the same for each Lot. Lots owned by the Developer, who is not subject to assessments, shall not be considered when determining the assessment for each Lot. The budget and the annual assessments shall become effective unless disapproved at the annual meeting by either (i) Developer, so long as there is a Class B member; or (ii) a vote with a majority of the Owners voting in person or by proxy at such meeting. In the event the proposed budget is not approved or the Board fails for any reason to determine the budget for the succeeding year, then until a budget has been determined as provided herein, the budget and annual assessments in effect for the then current year shall continue for the succeeding year. If any budget at any time proves inadequate for any reason, the Board may call a meeting of the Association for the approval of a special assessment.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessments applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of at least two thirds (2/3) of the Class A Members and the Class B member, if any, voting in person or by proxy at a meeting duly called for such purpose. Special assessments may also be levied by the Association if for any reason the annual assessments prove inadequate to defray the expenses of the Association in fulfilling its duties and obligations hereunder, subject to the consent of the members as set forth above. Developer shall not be subject to Special Assessments.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 above shall be sent to all members not less than ten (10) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty percent (50%) of all the votes of each class of membership shall constitute a quorum. If the required quorum at the subsequent meeting shall be one half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

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

Section 7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall be paid in such manner and on such dates as may be fixed by the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a specified Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the maximum legal rate per annum. In such case, the Association may accelerate, at its option, the entire unpaid balance of the assessment and may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against such Owner's Lot, and interest, costs and reasonable attorney's fees if any such action shall be added to the amount of such assessment. Each such Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association, or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of liens against real property, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage foreclosure on real property, and such Owner hereby expressly grants to the Association a power of sale in connection with the foreclosure of said lien. The lien provided for in this Section shall be in favor of the Association and shall be for the benefit for all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid for the interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area, abandonment of his Lot or by renunciation of membership in the Association. An Owner may give to the Association, nevertheless, subject to acceptance thereof by the Association, a deed in lieu of foreclosure.

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

Section 10. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein: (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (b) all Common Area; (c) all properties exempted from taxation by state or local governments upon the terms and to the extent of such legal exemption; (d) all properties owned by Developer.

ARTICLE VI  
MAINTENANCE

Section 1. Association's Responsibility. Except as otherwise provided for herein, the Association shall maintain and keep in good repair all portions of the Common Area and improvements thereon, if any. The Association's responsibility with respect to the Common Area shall be deemed to include the maintenance, repair and replacement of (i) all roads, driveways, walks, parking areas and buildings and other improvements, if any, situated within the Common Area; (ii) such utility lines, pipes, plumbing, wires, conduits and systems which are a part of the Common Area; and (iii) all lawns, trees, shrubs, hedges, grass and other landscaping situated within or upon the Common Area.

Section 2. Owner's Responsibilities. Each Owner of a Lot, whether vacant or occupied, shall keep and maintain his Lot and the exterior of any and all improvements located thereon in a neat, attractive and safe condition. Such maintenance shall include, but shall not be limited to, painting, repairing, replacing and care for roofs, gutters, downspouts, building surfaces, trees, shrubs, grass, walks and other exterior improvements. Should any Owner of a Lot fail to maintain his Lot or the improvements thereon as set forth hereinabove, the Architectural Control Committee, its agents and representatives, may, after thirty (30) days written notice to the Owner of such Lot, enter upon his Lot for the purpose of mowing, removing, clearing, cutting, or pruning underbrush, weeds or other unsightly growth, for removing garbage or trash, or for performing such exterior maintenance as the Architectural Control Committee, in the exercise of its sole discretion, deems necessary or advisable. Such Owner shall be personally liable to the Architectural Control Committee for the direct and indirect cost of such maintenance, which costs shall be added to and become part of the assessment to which such Owner and his Lot are subject. Although notice given as herein provided shall be sufficient to give the Architectural Control Committee, its agents and representatives, the right to enter upon such Lot and perform such maintenance, entry for such purpose shall be only between the hours of 9:00 A.M. and 5:00 P.M. on any day except Sunday. The provisions hereof shall not be construed, however, as an obligation on the part of the Architectural Control Committee to mow, clear, cut or prune any Lot; to provide garbage or trash removal service, or to perform such exterior maintenance.

Section 1. Utility Easements. Subject to the terms and conditions of the Declaration of Restrictive Covenants dated September 6, 1995 recorded in Deed Book 2729, Page 236, Bibb County, Georgia records and the Special Warranty Deed dated on said date and recorded in Deed Book 2729, Page 238, aforesaid records, there is hereby created in favor of the Association an easement upon, across, over, through and under all of the Common Area for ingress, egress, installation, replacement, repair and maintenance of all utility and service lines and systems, including but not limited to, water, sewers, gas, telephones, electricity, television, cable or communication lines and systems. An easement is further granted to the Association, its officers, agents, employees and any management company retained by the Association, to enter in or to cross over the Common Area and the Lots, to inspect and to perform the duties of maintenance and repair of the Common Area and the Lots, as provided for herein. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines or other utilities may be installed or relocated on the property except as initially programmed and approved by the Developer or thereafter approved by Developer or the Board. Should any utility furnishing a service covered by the general easement herein provided request a specific easement be a separate recordable document, Developer or the Association shall have the right to grant such easement on the Common Area without conflicting with the terms hereof.

Section 2. Easements for Developer. Developer hereby reserves for itself, its successors and assigns, the following easements and right of ways in, on, over, under and through any part of the Property owned by Developer and the Common Area for so long as Developer owns any Lot primarily for the purpose of sale.

- (a) for the erection, installation, construction and maintenance of wires, lines, and conduits, and necessary or proper attachments in connection with the transmission of electricity, gas, water, telephone, community antenna, television cables and other utilities;
- (b) for the construction of improvements on the Lots;
- (c) for the installation, construction and maintenance of storm-water drains, public and private sewers and for any other public or quasi-public utility facility;
- (d) for the use of the Common Area and any sales offices, model units and parking spaces in connection with its efforts to market Lots;
- (e) for the maintenance of such other facilities and equipment as in the sole discretion of Developer may be reasonably required, convenient or incidental to the completion, improvements and sale of Lots; and

(f) for a "green space area" in which no person may clear or maintain said portion of the Property nor construct any improvements thereon, such area more particularly shown and described in the documents set forth in Section 1 of Article VII hereof

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

ARTICLE VIII  
GENERAL COVENANTS AND RESTRICTIONS

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

Section 1. Residential Use. All Lots shall be restricted exclusively to single-family residential use. No Lot, or any portion thereof, shall at any time be used for any commercial, business or professional purpose; provided, however, that nothing herein shall be construed to prohibit or prevent Developer or any builder of residences in Westchester Hills from using any Lot owned by Developer or such builder for the purpose of carrying on business related to the development, improvement and sale of lots in Westchester Hills. Developer specifically reserves the right to establish a model home to be used by Developer and/or real estate agent employed by Developer.

Section 2. Common Area. The Common Area shall be used only by the Owners and their agents, servants, tenants, family members, invitees and licensees for access, ingress to and egress from their respective Lots and for such other purposes as may be authorized by the Association.

Section 3. Nuisances. (a) No unlawful, noxious or offensive activities shall be carried on in any Lot, or upon the Common Area, nor shall anything be done therein or thereon which, in the judgment of the Board, constitutes a nuisance, causes unreasonable noise or disturbance of others or unreasonably interferes with other Owners' use of their Lots and/or the Common Area.

(b) No rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of any Owner's Lot so as to render the same unsanitary, unsightly or offensive. No nuisance shall be permitted to exist upon any portion of the Property. Without limiting the generality of any of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on the Property or any portion thereof.

Section 4. 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

Structural Control Committee of plans and specifications for such split, division or subdivision.

Section 5. Erosion Control. (a) No activity which may create erosion or siltation problems shall be undertaken on any Lot without the prior written approval of the Architectural Control Committee of plans and specifications for the prevention and control of such erosion or siltation. The Architectural Control Committee may, as a condition of approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include (by way of example and not of limitation) physical devices for controlling the run-off and drainage of water, special precautions in grading and otherwise changing the natural landscape and required landscaping as provided for in Section 6.

(b) On those lots having a drainage ditch, or ditches, either natural or man-made said ditch shall not be altered, covered or diverted so as to cause damage to an adjoining lot. Such ditch, or ditches, may, however, be enclosed with culvert pipe of size, capacity and installation approved by the County Engineer provided that such enclosures do not increase the volume of water normally flowing in said ditch or ditches, or so concentrate such flow of water as to cause damage to any other property owner or owners within such Subdivision.

Section 6. Landscaping. No construction or alteration of any Structure shall take place without the prior written approval by the Architectural Control Committee of plans and specifications for the landscaping to accompany such construction or alteration. Additionally, each builder, contractor or owner of each Lot shall certify to the Architectural Committee at the completion of the residence erected on each said lot that said builder, contractor, and/or owner have expended not less than \$800.00 to purchase and plant ornamental plants, trees and shrubs (exclusive of grading, topsoil, seed, sod, fertilizer and other landscaping). Said cost is to be based on the costs prevailing at the time of the execution of these Covenants. The Architectural Control Committee may in its sole discretion require such builder, contractor or owner to submit paid receipts evidencing each expenditure.

Section 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 desired for security purposes in accordance with plans and specifications therefore approved by the Architectural Control Committee. No contractor or builder shall erect on any Lot any temporary building or shed for use in connection with construction on such Lot without the prior written consent of the Architectural Control Committee.

Section 8. Signs. (a) No signs whatsoever (including but not limited to commercial and similar signs) shall without the Architectural Control Committee's prior written approval of plans and specifications therefore, be installed, altered or maintained on any Lot, or on any portion of a Structure visible from the exterior thereof, except:

- (i) such signs as may be required by legal proceedings;
- (ii) a sign indicating the builder of the residence on the Lot;
- (iii) not more than one "For Sale" or "For Rent" sign; provided, however, that in no event shall any such sign be larger than four square feet in area; and
- (iv) directional signs for vehicular or pedestrian safety in accordance with plans and specifications approved by the Architectural Control Committee;

(b) Following the consummation of the sale of any Lot, the "For Sale" sign and the builder's sign located thereon, if any, shall be removed immediately.

Section 9. Setbacks. In approving plans and specifications for any proposed Structure, the Architectural Control Committee may establish setback requirements for the location of such Structures which are more restrictive than those established by the Plat. No Structure shall be erected or placed on any Lot unless its location is consistent with such setbacks.

Section 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 Architectural Control Committee of plans and specifications for such fences and walls.

Section 11. Roads and Driveways. No road or driveway shall be constructed or altered on any Lot without the prior written approval of the Architectural Control Committee of plans and specifications for such roads and driveways. Such specifications shall include the proposed substance to be used in constructing such roads and driveways, which substance shall be satisfactory to the Architectural Control Committee.

During approved construction, all vehicles in any way connected with such construction shall enter the Lot or Lots under construction only by the driveway as approved in the plans by the Architectural Control Committee. In no event shall any driveways other than those approved by the Architectural Control Committee be constructed or used for temporary access to any Lot. All vehicles shall be parked at the Lot to avoid damage to trees, paving, curbs, gutters and any other improvements on the Lot.

Section 12. Antennae and Satellite Dishes. No antenna, satellite dish or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained on the exterior of any Structure without the prior written approval of the Architectural Control Committee. In no event shall freestanding transmission or receiving towers be permitted.

Section 13. Clotheslines. No outside clothesline shall be placed on any Lot.

Section 14. Recreational Vehicles, Trailers, etc. The Architectural Control Committee, in reviewing the plans and specifications for any proposed Structure, may require that special parking areas be made available for recreational vehicles. No trailer, trailer house, boat, or recreational vehicle shall be parked on any Lot, except for such parking areas as specified by the Architectural Control Committee pursuant to this Section 14 or within enclosures or behind screening erected in accordance with plans and specifications submitted to and approved by the Architectural Control Committee. While nothing contained herein shall prohibit the use of portable or temporary buildings for trailers as field offices by contractors during actual construction, the use, appearance and maintenance on such a building or trailer must be specifically approved by the Architectural Control Committee prior to its being moved onto the construction site.

Section 15. Recreational Equipment. No recreational and playground equipment shall be placed or installed on any Lot unless said recreational or playground equipment is constructed of wood or heavy plastic, is reasonably screened and is approved by the Architectural Control Committee.

Section 16. Accessory Structures. A detached accessory structure may be placed on a Lot to be used for a playhouse, a swimming pool, tennis court, a tool shed, a mailbox, a dog house or a garage, a garage may also be an attached accessory structure. Such accessory structures shall not exceed 20 feet in height and shall conform in exterior design and quality to the dwelling on the same Lot. With the exception of a garage that is attached to a dwelling, an accessory structure placed on a Lot shall be located only behind the dwelling as such dwelling fronts on the street abutting such Lot. Such accessory Structures shall also be located with such side a rear setback lines as may be required hereby or by applicable zoning law. The Architectural Control Committee shall have the right to approve or disapprove the plans and specifications for any accessory Structure to be erected on any Lot, and construction of any accessory structure may not be commenced until complete final plans and specifications shall have been submitted to and approved by the Architectural Control Committee in accordance with the provisions of these covenants. Any accessory Structure shall be constructed concurrently with or subsequent to the construction of the dwelling on the Lot on which such accessory structure is located.

Section 17. Improvement of Lots. All construction of dwellings, accessory structures and all other improvements in Westchester Hills shall be undertaken and completed in accordance with the following conditions:

(a) All construction shall be carried out in compliance with the laws, code rules, regulations and orders of all applicable governmental agencies and authorities. The residence to be constructed on each lot in the subdivision shall be completed in a good and workmanlike manner, and shall be completed within nine (9) months after the beginning of the framing for such construction. No improvements which have been partially or totally destroyed by fire or other catastrophe shall be allowed to remain on any lot in the subdivision for more than three (3) months after such destruction or damage.



- (b) All single-family residences constructed on the Lots shall be approved by the Architectural Control Committee in its sole and uncontrolled discretion.
- (c) All foundations when exposed must either be stuccoed or brick, and there shall be no chain-link fence or fences of walls of any other material which the Architectural Control Committee determines to be incompatible with dwellings or other structures in Westchester Hills.
- (d) Only one mailbox shall be located on any Lot, which mailbox will be consistent with the quality and design of surrounding dwellings and mailboxes and shall be placed and maintained to complement the dwelling to which it is appurtenant to the extent such mailbox permitted to be located and maintained by the United States Postal Service, its successors and assigns, and said mailbox shall be in conformity with the plans and specifications furnished by the Architectural Control Committee.
- (e) No lumber, bricks, stones, cinder blocks, scaffolding, mechanical devices, or any other materials or devices used for building purposes shall be stored on any Lot except for purposes of construction of a dwelling or accessory structure on such Lot, nor shall any such building materials or devices be stored on any Lot for longer than the length of time reasonable necessary for the construction in which such materials or devices are to be used.
- (f) No exposed, above-ground tanks for the storage of fuel or water or any other substance shall be located on any Lot other than apparatus relating to solar energy, the location and design of which must first be approved by the Architectural Control Committee.
- (g) Adequate off-street parking shall be provided for each Lot.
- (h) Containers for garbage and other refuse shall be underground or in screened sanitary enclosures; no incinerators for garbage, trash or other refuse shall be used, and a garbage disposal is required for each dwelling.
- (i) All garages must have doors, each garage door must be coordinated with the dwelling to which it is appurtenant; the garage must have adequate floor space to contain at least two automobiles and must not have its entrance facing the adjoining street unless approved by the Architectural Control Committee.
- (j) No window air conditioning unit may be located in any part of any dwelling or accessory structure which is visible from any street, and all exterior compressor units shall be ground mounted and screened by fencing or planting of a density and height to hide the unit effectively, which fencing or planting shall first be approved by the Architectural Control Committee.

(k) Any screen porch which is a part of any dwelling or accessory structure must have a dark color screen, and no bright color silver finish screens may be used.

(l) No plumbing vent or heating vent shall be placed on the front side of any roof or any dwelling or accessory structure, and any such vent shall be painted the same color as the roof on which it is placed.

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

(n) The enclosed, heated living area (exclusive of garages, carports, porches, terraces, bulk-storage and basement) of all one-story dwellings shall contain not less than Two Thousand Four Hundred (2,400) square feet. The enclosed, heated living area (exclusive of garages, carports, porches, terraces, bulk-storage and basement) of all two story dwellings shall contain not less than Two Thousand Six Hundred (2,600) square feet. Any two or two and one-half story dwelling shall contain enclosed heated living area on the first floor (exclusive of garages, carports, porches, terraces, bulk-storage and basement) of at least One Thousand Five Hundred (1,500) square feet. No dwelling shall be constructed exceeding two and one-half (2 1/2) stories in height on any Lot.

(o) Driveways shall be constructed with concrete or asphaltic hot mix. Said driveways shall have a minimum width of ten (10) feet, a minimum of four (4) inches of concrete or two (2) inches of asphalt and shall run from the paving of the road to the minimum building set-back line for the respective lots. However, other hard surface material or design may be approved by the Architectural Control Committee if any exception is requested when plans are submitted to the Architectural Control Committee for approval. Existing trees, topography and landscape planning should be taken into consideration and where possible driveways should curve.

(p) Silver-finish aluminum doors (including sliding doors) and windows shall not be approved. A factory-painted or anodized finish aluminum may be used, the color of which shall be specified in the plans submitted to the Architectural Control Committee for approval.

(q) If brick is used in exterior construction, it must either be standard brick (2 1/4" x 8") face exposure) or Norman brick (2 1/4" x 11 1/2" face exposure). No Norwegian brick, thrift brick or the like shall be used in the exterior construction of any residence. Concrete block used above ground, if exposed to view, must be stuccoed and painted.

(r) All roofs shall have a pitch of not less than 8/12 and white or light colored shingles shall not be allowed unless specifically approved by the Architectural Control Committee.

(s) The exterior of all dwellings and outbuildings shall be constructed of brick, stucco or dryvit. Siding is not allowed unless located in the rear of the dwelling, not visible from the adjoining street.

Section 18. Animals. No animals, including birds, insects and reptiles, may be kept on any Lot unless kept thereon solely as household pets and not for commercial purposes. No animals shall be allowed to become a nuisance. No Structure for the care, housing or confinement of any animal shall be constructed, placed or altered on any Lot unless plans, and specifications for said Structure have first been approved by the Architectural Control Committee.

Section 19. Water Supply. No individual water supply system shall be permitted on any Lot without the prior written approval of the Architectural Control Committee. If such approval is given, such system must be located, constructed and equipped in accordance with the requirements, standards and recommendations of federal, state and local public health authorities, and all necessary approvals of such system as installed shall be obtained from such authorities at the sole cost and expense of the Owner of the Lot to be served by such system.

Section 20. Trees and Shrubs. No trees measuring 18 inches or more in diameter at a point 2 feet above ground level, no flowering trees or shrubs, nor any evergreens on any Lot may be removed without the prior approval of the Architectural Control Committee unless located within 10 feet of the approved site for a dwelling or within the right of way of driveways or walkways, with the exception of damaged or dead trees and trees which must be removed due to an emergency.

Section 21. Greenbelt Area. The areas shaded on Exhibit "C" to the Special Warranty Deed from Southern Pine Plantations of Georgia, Inc. to J & S Acquisitions, Inc. and Land South Investments, Inc. recorded in Deed Book 2729, Page 238, Bibb County, Georgia records is designated as a greenbelt area which shall remain substantially in its natural state as undisturbed buffer zones. Accordingly, no trees, shrubbery, or any type of foliage or vegetation may be removed, cut or altered in any fashion without the prior written consent of both the Architectural Control Committee and Southern Pine Plantations, Inc.

#### ARTICLE IX INSURANCE

The Board, or its duly authorized agent, shall obtain such insurance policies upon the Common Area as the Board deems necessary or desirable in its sole discretion. The named insured on all policies of insurance shall be the Association.

ARTICLE X  
GENERAL PROVISIONS

Section 1. Enforcement. (a) The Association, Architectural Control Committee, the Developer or any Owner, shall have the right to enforce, by an proceeding at law or in equity, all restrictions, conditions, covenants, reservations, easements, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association, the Architectural Control Committee or by any Owner to enforce any covenants or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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

Section 2. Severability. If any provision of the Declaration, or any paragraph, subparagraph, article, section, sentence, clause, phrase, word or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Declaration and the application of any such provision, paragraph, subparagraph, article, section, sentence, clause, phrase, or word in any other circumstances shall not be affected thereby and the remainder of this Declaration shall be construed as if such invalid part was never included therein.

Section 3. Headings. The headings of articles and sections in this Declaration are for convenience of reference only and shall not in any way limit or define the content or substance of such articles and sections.

Section 4. Duration. The covenants and restrictions of this Declaration shall run with and bind the land for a period of 20 years from the Date this Declaration is recorded, at the end of which period such covenants and restrictions shall be automatically extended for successive periods of 10 years each, unless at least 2/3 of the owners at the time of the expiration of the initial period, or of any extension period, shall sign an instrument in which said covenants and restrictions are modified in whole or in part, which instrument shall be filed of record in the Clerk's Office, Bibb Superior Court.

Section 5. Rights and Obligations. Each grantee of the Developer, by the acceptance of a deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration. All rights, benefits and privileges of every character hereby imposed shall be deemed and taken to be covenants running with the land and shall bind

any person having at any time any interest or estate in the Property or any portion thereof, and shall inure to the benefit of such grantee in like manner as though the provisions of this declaration were recited and stipulated at length in each and every deed of conveyance or contract for conveyance.

Section 6. Notices. Notices provided for in this Declaration shall be in writing and shall be addressed to any Owner at his Lot or at such other address as hereinafter provided. Notices to the Association or Board shall be in writing and shall be addressed to Westchester Hills Homeowners Association, Inc., 5400 Riverside Drive, Suite 101, Macon, Georgia 31210, or at such different address or addresses as reflect their proper address. Any Owner may designate a different address for notices to him by giving written notice to the Association. Notices addressed as above shall be deemed delivered upon mailing by United States registered or certified mail, return receipt requested, or when delivered in person.

Section 7. Amendment. This Declaration may be amended unilaterally at any time and from time to time by Developer.

- (i) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith;
- (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration;
- (iii) if such amendment is required to obtain the approval of this Declaration by an institutional lender, such as a bank, savings and loan association or life insurance company, or by a governmental lender or purchaser of mortgage loans, such as the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots subject to this Declaration; or

(iv) if such amendment is necessary to enable any governmental agency, such as the Veterans Administration, or reputable private insurance company to insure mortgage loans on the Lots subject to this Declaration; provided, however, any such amendment shall not make any substantial changes in any of the provisions of this Declaration. Further, this Declaration may be amended at any time and from time to time by an agreement signed by at least 75 percent of the Owners of Lots; provided, however, such amendment by the Owners shall not be effective unless also signed by Developer, if Developer is the owner of any real property then subject to this Declaration. Any such amendment shall not become effective until the instrument evidencing such change has been filed or recorded. Every purchaser or grantee of any interest in any real property made subject to this Declaration,

by acceptance of a deed or other conveyance therefore, thereby agrees that this Declaration may be amended as provided in this section.

Section 8. Variances. The restrictions set out in this Declaration may be altered, varied or waived on an individual lot basis upon compliance with the following regulations and procedures, to-wit:

- (i) Any owner of any lot in said section desirous of securing a waiver or variance of said restriction shall request the same in writing and shall deliver said petition to any member of the Architectural Control Committee hereinbefore named;
- (ii) If the Architectural Control Committee, in the exercise of its sole discretion, approves of said variance, it shall notify the petitioner of the same in writing;
- (iii) The written approval of any requested alteration or variance by the Architectural Control Committee shall constitute absolute waiver of and shall otherwise void the restrictions contained in this paragraph relative to the subject lot;
- (iv) The waiver of the restrictions contained in this paragraph on any petitioned lot shall not constitute a waiver of said restriction on any other lot; and,
- (v) Unless the written approval as outlined herein is secured, the restrictions contained in this.

Section 9. No Liability. Developer has used its best efforts and acted with due diligence in connection with the drafting, preparation, and recording of this Declaration to ensure that each Owner has the right and power to enforce the terms and provisions hereof against every other Owner. In the event this Declaration is unenforceable by an Owner or any other person for any reason whatsoever, Developer shall have no liability of any kind as a result of such unenforceability, and each Owner, by acceptance of a deed conveying a Lot, acknowledges and agrees that Developer shall have no liability.