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RECORD AND RETURN TO:

Neil S. Morrisroe, Esq.  
McLain & Merritt, P.C.  
3445 Peachtree Road, N.E., Suite 500  
Atlanta, GA 30326

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**DECLARATION OF COVENANTS,**

**CONDITIONS, RESTRICTIONS**

**AND EASEMENTS**

**FOR**

**WEST HIGHLANDS AT PERRY BOULEVARD**

**SUBDIVISION**

**DECLARATIONS OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
WEST HIGHLANDS AT PERRY BOULEVARD**

THIS DECLARATION, made on the date hereinafter set forth by Brock Built, LLC, a Georgia limited liability company (hereinafter called the "Declarant").

**WITNESSETH:**

WHEREAS, Declarant is the owner of the real property described in Exhibit "B" of this Declaration; and

WHEREAS, Declarant desires to subject said real property described in Exhibit "B" hereof to the provisions of this Declaration and to provide for the subjecting of other real property to the provisions of this Declaration;

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

**Article 1.  
Definitions**

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

**Article 2.  
Property Subject to this Declaration**

**Section 2.1. Property Hereby Subject to this Declaration.** The real property which is, by the recording of this Declaration, subjected to the covenants, conditions, restrictions, easements, assessments and liens hereafter set forth and which, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied and mortgaged or otherwise encumbered subject to this Declaration, is the real property described in Exhibit "B" attached hereto and by reference made a part hereof.

**Section 2.2. Other Property.** Only the real property described in Exhibit "B" is hereby made subject to this Declaration; provided, however, by one or more supplementary declarations, Declarant and/or the Association shall have the right to subject other real property to this Declaration as provided in Article 12 hereof.

**Article 3.**  
**Property Rights, Easements and Use Restrictions**

**Section 3.1. Easements of Use and Enjoyment.** Every Owner of a Lot shall have a right and easement of use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to his Lot, subject to the following provisions:

(a) The right of the Association to suspend the voting rights and right to use of the recreational facilities, if any, now and hereafter situated upon the Common Property for any period during which any assessment against such Lot which is herein provided for remains unpaid and for a reasonable period of time for an infraction of the Association's published rules and regulations.

(b) The right of the Association to borrow money for the purposes of improving the Common Property, or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon, or for construction, maintaining, repairing or replacing utility systems and facilities, and, upon the assent of Declarant (if Declarant then has the unexpired option to annex additional property to the terms of this Declaration and/or the right to control the Association as herein elsewhere provided) and the requisite assent of other Lot Owners or mortgagees as provided in Section 6(d)(1) of Article 13 hereof, give as security for the payment of any such loan a mortgage conveying all or any portion of the Common Property, title to which is vested in the Association; provided, however, the lien and encumbrance of any such mortgage given by the Association shall be subject and subordinate to any and all rights, interest, options, easements and privileges herein reserved or established for the benefit of Declarant, or any Lot or Lot Owner, or the holder of any mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Development. Any provision in this Declaration or in any such mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not abrogate, diminish, modify, change, alter, rescind, cancel or terminate any rights, interests, options, easements or privileges herein reserved or established for the benefit of Declarant, or any Lot or Lot Owner encumbering any Lot or other property located within the Development.

(c) The right of the Association to limit the use and enjoyment of any recreational facilities now or hereafter situated upon the Common Property to the Owners of Lots and their respective families, tenants and guests; the right of the Association to limit the number of guests of Lot Owners and tenants; the right of the Association to charge reasonable fees for the actual use of or participation of a particular recreational facility or activity now or hereafter situated or provided upon the Common Property (which charges and fees, unless paid separately, shall be added to and become part of the assessment or portion thereof next coming due to which the Lot Owner is subject).

(d) The right of the Association to dedicate or transfer all or any portion of the Common Property, title of which is vested in the Association, to any public agency, authority, or utility for such purpose and subject to such conditions as may be agreed to by the members of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or

transfer has been approved in accordance with the provisions of Section 6(d)(1) of Article 9 hereof and by Declarant if Declarant then has the unexpired option to annex additional property to the terms of this Declaration and/or has the right to control the Association as herein elsewhere provided.

- (e) The rights, easements and licenses, together with the right of the Association to grant easements, licenses and permits as provided in this Article 3.
- (f) The rights and obligations of the Association to maintain, repair and replace the Common Property.
- (g) The rights reserved to the Association as provided in Article 10 hereof.
- (h) The rights reserved to Declarant and the Association in Article 11 hereof.
- (i) The rights and obligations of the Association under the Cost Sharing Agreement.

**Section 3.2. Access to Common Property.** The Association shall have an easement of access, ingress and egress over the Lots subjected to this Declaration as shall be reasonably necessary to permit access, ingress and egress to and from portions of the Common Property of persons and equipment employed or used by the Association in the performance of its duties hereunder. This easement shall be exercised in such a manner as not to materially interfere with the use, occupancy or enjoyment of the property servient to this easement.

**Section 3.3. Delegation of Use.** A Lot Owner may delegate, in accordance with and subject to the by-laws and rules and regulations of the Association, his right of use and enjoyment in and to the Common Property, and facilities located thereon to the members of his family, tenants and guests.

**Section 3.4. Utilities, Etc.** Declarant, as to any Common Property or Lot owned by Declarant, title to which is vested in the Association, and the Association, upon a majority vote of its Board of Directors, as to the Common Property, is hereby authorized and empowered to grant and enter into such licenses, easements and permits as either of them shall deem necessary and appropriate upon, across, above and under any such Lot or the Common Property, as the case may be, for access, ingress, egress, installation, use, repairing, replacing and maintenance of the Common Property and all utilities serving the Development or any portion thereof including, but not limited to gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system or security system, which the Association might decide to have installed to serve the Development. It shall be expressly permissible for the Declarant or the Association, as the case may be, to install, repair, replace and maintain or to authorize the installation, repairing, replacing and maintaining of such poles, wires, conduits, cables or other equipment related to the providing of any such utility or service. Should any party furnishing any utility or service request a specific license, easement or permit by separate recordable document, Declarant, or the Association, as the case may be, shall have the right to execute and deliver such written document and every grantee of any interest in the property located within the Development consents thereto and further hereby agrees to give his specific written consent thereto in recordable form if requested by Declarant or the Board of Directors of the Association. Any license, easement or permit granted or entered into pursuant hereto by the Declarant or the Association shall be and remain in full force and effect perpetually or for such shorter period of time as may be specified in the particular instrument creating the same. Further, each Lot or any Common Property now or hereafter subjected to this Declaration shall also be subject to those licenses,

easements and other matters, if any, shown or set forth on any recorded plat thereof or of the Development.

**Section 3.5. Storm Drainage and Sanitary Sewer Systems.** Storm drainage systems and sanitary sewer systems may be located over, across, upon or under certain Lots and other portions of the Development. Except with respect to any systems dedicated to, or owned, operated or maintained by a governmental authority, any such storm drainage and sanitary sewer systems shall be maintained in good order and repair by the Association up to the point where said sanitary sewer system intersects the Lot line of a Lot. All storm drainage and sanitary sewer systems located within the boundary lines of the Lots shall be maintained in good order and repair by the Owners of the Lots. If any Lot Owner fails to maintain or repair such systems as aforesaid, the Association shall have the right, but not the obligation, to maintain or repair such systems and assess the defaulting Owner for the cost thereto pursuant to Article 9 hereof. To the extent required to effectuate the foregoing plan, there shall be an easement in favor of each Lot for the purposes of providing connection of that Lot with the storm drainage system and sanitary sewer system most convenient thereto. Each Lot and the Common Property, title to which is vested in the Association, shall be subject to easements in favor of all the other Lots providing for the passage through any portion of such Lots or Common Property of necessary storm drainage systems and sanitary sewer systems. Declarant hereby specifically reserves and establishes for the benefit of the Association an easement to inspect, repair, replace and maintain any private (undedicated) storm drainage and sanitary sewer system constructed or installed in the Development. This easement shall include the right of the Association to add to and supplement any existing storm drainage or sanitary sewer system, and also the right of access, ingress and egress to carry out the functions authorized by this easement. All of the foregoing shall not materially interfere with the use, occupancy or enjoyment of all or any part of the Lots or the Common Property servient to such easements or to which such easements are appurtenant.

**Section 3.6. Water Lines and Water Service.** Any water line that serves any part of the Development which is located within the Common Property, title to which is vested in the Association, if not owned, operated and maintained by the governmental authority providing water service to the Development, shall be maintained in good order and repair by the Association as part of the Common Property up to the point where said water line intersects a Lot line. All individual service water lines located within the boundaries of the Lots shall be maintained in good order and repair by the Lot Owners. If any Lot Owner fails to maintain or repair such water lines, the Association shall have the right, but not the obligation, to maintain or repair the water lines and assess the defaulting owner for the cost thereof pursuant to Article 9 hereof. The Owner of each Lot hereby expressly gives, grants and conveys to the Association the right, title and privilege of any easement to inspect, repair, replace and maintain such portions of said water lines and related facilities, the responsibility for the maintenance and repair of which is the Association's hereunder. This easement shall include the right of the Association to add to and supplement any such system and also the right of access, ingress and egress to carry out the functions authorized by this easement.

**Section 3.7. Encroachments.** If any portion of the Common Property encroaches upon any Lot or residence, or if any residence encroaches upon any other Lot or residence or any portion of the Common Property, as a result of construction, reconstruction, repair, renovation, restoration, shifting, settlement or movement of any portion of the Development, a valid easement for the encroachment and for the maintenance, repair and replacement thereof shall exist so long as the encroachment exists. In the event any building, any residence, any adjoining residence, or any adjoining Common Property shall be partially or totally damaged or destroyed as a result of fire or other casualty, or as a result of condemnation or eminent domain proceedings, and then repaired or reconstructed, minor encroachments

or portions of the Common Property upon any Lot or residence, or of any residence upon any other Lot or residence or upon any portion of the Common Property, due to such repair or encroachments, a valid easement for the encroachment and for the maintenance, repair and replacement thereof shall exist. The foregoing provisions of this Section 7 are included herein to provide for inadvertent encroachments which occur as a result of physical causes (such as, for example, shifting or settling), or by unintentional conduct on the part of the Association or a Lot Owner, or for encroachments resulting from and included as a part of the original construction (or reconstruction) of a residence (such as, for example, overhanging bay windows, chimneys or the like). Nothing herein shall, however, authorize or permit any Owner or the Association to willfully create encroachments on any Lot or the Common Property in derogation of the rights of the Owner thereof, and no easement for such willful encroachments shall exist. Each Owner hereby specifically acknowledges, however, that there are certain systems and/or improvements located wholly or partially on a Lot or Lots within the Development which, although not owned by the Association, are the Association's obligation to maintain and repair, including without limitation certain access ways, the detention facilities serving the Development, and certain other improvements not designed to serve a specific Lot or Lots. Notwithstanding anything contained in this Section 7, a valid easement for the installation, maintenance and repair of all of such systems and/or improvements shall and does hereby exist for the benefit of the Association, together with any other easements or rights herein elsewhere provided with respect thereto.

**Section 3.8. Exterior Maintenance.** The Association and each Lot Owner shall have an easement of use over the property adjoining such Owner's Lot as shall be reasonably necessary to enable the Association or such Owner, as the case may be, to perform required maintenance on his Lot and on the improvements located thereon. In the event of prolonged construction, reasonable notice thereof shall be given to any such adjoining Owner and such construction shall be done only during reasonable daylight hours. This easement shall be exercised in such a manner as not to materially interfere with the use, occupancy or enjoyment of all or any part of such adjoining property. Nothing contained in this Section 8 shall, however, abrogate, modify or diminish the rights accorded to the Declarant (or builders if other than Declarant) in Section 15 of Exhibit "D" hereof.

**Section 3.9. Common Driveways and Access Ways.** To the extent that there are common driveways and access ways within the Development serving more than one Lot, each Owner of a Lot served thereby, and the tenants, guest and invitees of each such Owner, shall have a non-exclusive easement and right of pedestrian and motor vehicular access, ingress and egress over, through and across such driveways or access way to the extent reasonably necessary to provide access to such Owner's Lot. No Owner, or any tenant, guest or invitee of an Owner, of a Lot served by or on which is located all or any part of a common driveway or access way shall block any such common driveway or access way or impair or otherwise impede in any manner the rights herein granted to the Owner of any other Lot served by such driveway or access way. Nothing contained herein shall, however, permit any Owner of a Lot served by a common driveway or access way to park any vehicle upon the Lot of any other Owner served by such common driveway or access way or on any portion of any such common driveway or access way necessary for the use by any other Owner of a Lot served thereby for the purposes herein provided. Said easement and right of access, ingress and egress shall be a benefit to and burden upon each Lot served by or on which is located all or any part of a common driveway or access way and shall be perpetual and run with and bind the land and shall not be altered, amended, abrogated, modified, rescinded or terminated with respect to any such Lot unless all of the Owners of the Lots served by such driveway or access way, as well as the holders of any mortgages affected thereby, specifically consent thereto by an instrument duly recorded in the office of the Clerk of the Superior Court of the County in which the Development is located. In furtherance of the provisions of Section 8.3 hereof and not in limitation thereof, included with

the Association's right to adopt reasonable rules and regulations regarding the use of such common driveways or access ways shall be the right to adopt reasonable penalties and sanctions for any Owner violating the provisions of this Section or any rules and regulations regarding the same, in addition to and not in lieu of any other rights or remedies herein elsewhere provided.

**Section 3.10. Private Roadways.** Certain Lots in the Development may be serviced by private roadways (the "Roadways") as shown on the plat for the Development recorded in the Superior Court of the County in which the Development is located. Each Owner of a Lot served by a Roadway, and the tenants, guests and invitees of each such Owner, shall have a non-exclusive easement and right of pedestrian and motor vehicular access, ingress and egress over, through and across such Roadway to the extent reasonably necessary to provide access to such Owner Lot. Declarant, for itself and for each individual Lot Owner, herein grants to all of the other Lot Owners a non-exclusive easement of ingress and egress over, through and across the Roadways for purposes of pedestrian and motor vehicular access to each of the Lots. Said easement and right of access, ingress and egress shall be a benefit to and burden upon each Lot served by or on which is located such Roadways and shall be perpetual and shall run with and bind the land and shall not be altered, amended, abrogated, modified, rescinded or terminated with respect to any Lot unless all the Owners of the Lots served by such Roadways, as well as the holders of any mortgages affected thereby, specifically consent thereto by an instrument in writing duly recorded in the Office of Clerk of Superior Court of the County in which the Development is located. Nothing contained herein shall permit any Owner of a Lot served by such Roadways to park a vehicle upon the Lot of any other Owner served by such Roadways. No Owner, or any tenant, guest or invitee of an Owner, served by the Roadways shall block or in any way impair or impede in any manner the Roadways or the rights herein granted to the Owner of any Lot served by the Roadways. In furtherance of the provisions of Section 8.3 hereof and not in limitation thereof, included within the Association's right to adopt reasonable rules and regulations regarding the use of the Roadways shall be the right to adopt reasonable penalties and sanctions for any Owner violating the provisions of this Section or any rules and regulations regarding the same, in addition to and not in lieu of any other rights or remedies herein elsewhere provided.

**Section 3.11. Easement During Construction and Sale Period.** Notwithstanding any provisions now or hereafter contained in this Declaration, the Bylaws, Articles of Incorporation, use restrictions, rules and regulations, architectural guidelines, and amendments thereto, Declarant reserves an easement across the Development for Declarant and any builder to maintain and carry on, upon such portion of the Development as Declarant may reasonably deem necessary, such facilities and activities as in the sole opinion of Declarant may be required or convenient for Declarant's and such builder's development, construction and sale activities related to property hereby and hereafter subjected to this Declaration or nearby property being developed by Declarant or such builder, including, but not limited to, the right to place or authorize the placement of marketing and directional signs on Lots or rights-of-way at street intersections within the Development; the right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in the Development, including, without limitation, any Lot; the right to relocate and tie into any portion of the Development with streets, driveways, paths, parking areas, and walkways; the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, cable televisions, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Development; the right to grant easements over, under, in or on the Development, including without limitation the Lots, for the benefit of neighboring properties for the purpose of tying into and/or otherwise connecting and using sewer and drainage lines and facilities constructed or installed in, on, under and/or over the

Development; the right to convert Lots (with the consent of the Owner thereof) to Common Property and/or streets; the right to construct recreational facilities, utilities and other improvements on Common Property; the right to carry on sales and promotional activities in the Development; and the right to construct and operate business offices, signs, construction trailers, model residences and sales offices. This Section shall not be amended without the Declarant's written consent until the Declarant's rights hereunder have terminated as herein provided.

**Article 4.**  
**Association Membership and Voting Rights**

**Section 4.1. Membership.** Every Owner of a Lot in the Development shall be a member of the Association. If title to a Lot is held by more than one person, each of such persons shall be members. Membership shall be appurtenant to the Lot to which it appertains and shall be transferred automatically by conveyance of that Lot. Membership in the Association may not be transferred except in connection with the transfer of title to a Lot.

**Section 4.2. Voting.** The Association shall have one class of voting membership which shall consist of all Owners of Lots located in the Development. Owners shall be entitled to one vote for each Lot owned. If the same Owners own more than one Lot, such Owner shall have membership privileges and pay assessments with respect of each Lot so owned. When more than one person owns a Lot, the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. In the event of a disagreement among such persons and an attempt by two or more of them to cast such vote or votes, such persons shall not be recognized and such vote or votes shall not be counted. All voting rights shall be subject to the restrictions and limitations provided herein (including but not limited to Section 13.1 hereof) and in the Article of Incorporation and by-laws of the Association.

**Section 4.3. Meetings.** Except as herein otherwise specifically provided, all matters concerning meetings of Members of the Association, including the time within which and the manner in which notice of any meeting shall be given to said members, and the quorum required for the transaction of business at any of such meetings, shall be as specified in the Articles of Incorporation or by-laws of the Association, as amended from time to time and by law.

**Section 4.4. Casting of Votes.** Subject to the provisions of this Declaration and the Articles of Incorporation, the votes of the Members shall be cast under the rules and procedures as may be prescribed in the by-laws of the Association, as amended from time to time, or by law.

**Section 4.5. Amplification.** The provisions of this Article are to be amplified by the Articles of Incorporation and by-laws of the Association; provided, however, that no such amplification shall substantially alter or amend any of the rights or obligations of the Owners of Lots as set forth herein. In the event of any conflict or inconsistencies between this Declaration, the Articles of Incorporation or the by-laws of the Association, this Declaration and the Articles of Incorporation (in that order) shall prevail.



**Article 5.**  
**Maintenance, Repair and Replacement**

**Section 5.1. Lot Owner's Responsibility.**

(a) All Lots, together with all improvements located thereon, shall be maintained in a neat, attractive and safe condition by their respective Owners in compliance with all applicable governmental rules and regulations and all rules and regulations set or prescribed from time to time by the Board of Directors of the Association or the Architectural Control Committee, as herein elsewhere more fully provided. Such maintenance shall include, but shall not be limited to, painting, repairing, replacing and caring for roofs, gutters, downspouts, building surfaces, driveways, trees, grass, shrubs, walks, and all other exterior improvements, systems and facilities exclusive to those matters which are the responsibility of the Association. It shall be the responsibility of the Lot Owner to perform said maintenance in such manner so as not to unreasonably disturb other Owners. To the extent that there are common driveways and access ways within the Development serving more than one Lot, the maintenance and repair of such common driveways or access ways shall be allocated as follows:

(b) In the event that the Board of Directors of the Association determines that: (i) any Owner failed or refused to discharge properly his obligations with regard to the maintenance, repair, or replacement of items for which he is responsible hereunder; or (ii) that the need for maintenance, repair or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, his or her family, guests, lessees or invitees, and is not covered or paid for by insurance in whole or in part, then, in that event, after approval by a two thirds (2/3) vote of the Board of Directors, the Association, except in the event of an emergency situation, shall give an Owner written notice of the Association's intent to provide such necessary maintenance repair or replacement, at the Owner's sole cost and expense, and setting forth with reasonable particularity the maintenance, repair or replacement deemed necessary. An Owner shall have thirty (30) days within which to complete said maintenance, repair or replacement or in the event that such maintenance, repair or replacement is not capable of completion within said thirty (30) day period, to commence said maintenance, repair or replacement within said period and diligently proceed to complete same. If any Owner does not comply with the provisions thereof, the Association may provide any such maintenance, repair or replacement at such Owner's sole cost and expense, and the Lot Owner shall be personally liable to the Association for such cost and expenses and the liability therefor shall be a permanent charge and lien against such Owner's Lot enforceable by the Association in the same manner as other liens for the improvement of real property or by any other appropriate proceeding at law or in equity.

(c) If the repair and/or maintenance is needed at the entrance area of the common driveways, access ways or Roadway leading to all of the Lots served by such common driveway, access way or Roadway, the Owners of all of such Lots served by said common driveway or access way shall divide equally the cost of all such repair and/or maintenance.

(d) If the repair and/or maintenance is needed at a point in the common driveway, access way or Roadway that only leads to or serves certain Lots, the maintenance and/or repair shall be the responsibility of the Owners of the Lots so served, with the cost thereof being divided equally between said Owners. If any Lot Owner fails or refuses to maintain and/or repair the common driveways, access ways or Roadway as aforesaid, the Association shall have the right, but not the obligation, to perform such maintenance or repair and assess the defaulting Owner for the cost thereof pursuant to Article 9 hereof. In the event a dispute arises as to the responsibility or costs of such maintenance and

repair, the Association shall have the absolute right, in its sole discretion, to make the decision as to who is responsible for such maintenance and repair and the cost thereof, which decision of the Association shall be binding upon all of the Lot Owners affected thereby.

**Section 5.2. Association's Responsibility.**

(a) The Association shall be responsible for the maintenance and repair of the Common Property (as defined in Exhibit "A," Section (d)) including, but not limited to, the detention facilities serving the Development, and any decorative structure not designed to serve a specific Lot or Lots. Additionally, and subject to the terms hereof, the Association shall be responsible for the maintenance, repair and replacement of those utility lines, systems and facilities or portions thereof which, pursuant to the terms hereof, are the responsibility of the Association to maintain, repair and replace, located on the Common Property.

(b) Supremacy of Master Association Declaration and/or Cost Sharing Agreement. In addition to all of the rights and obligations which have been conferred or imposed upon the Association pursuant to this Declaration and the other PUD Constituent Documents, the Association shall be entitled to exercise any of the rights conferred upon it and shall be subject to all of the obligations imposed upon it pursuant to a Cost Sharing Agreement and/or a Master Association Declaration, and shall be subject to all superior rights and powers which have been conferred pursuant to a Cost Sharing Agreement and/or Master Association Declaration. The Association shall take no action in derogation of the rights and obligations set forth in a Cost Sharing Agreement and/or a Master Association Declaration. Among other provisions, a Cost Sharing Agreement and/or Master Association Declaration obligate the Declarant and the Association to pay one-half of all costs associated with maintaining the parks located within the overall West Highlands at Perry Boulevard development, whether or not such parks are located within the boundaries of the Development, which parks are anticipated to be owned by the City of Atlanta and open for use by the general public.

Declarant may require the Owners of any portion of the Development to subject such property to additional covenants, conditions, restrictions and easements, including covenants obligating the Owners to be mandatory members of a separately incorporated master property owners association. Such additional covenants, conditions, restrictions and easements may be set forth in a supplementary declaration or a separate declaration of protective covenants, a Master Association Declaration, or other document filed in the Fulton County, Georgia records.

**Article 6.  
Insurance**

**Section 6.1. Insurance for the Association.** The Association's Board of Directors or its duly authorized agent shall have the authority to obtain insurance for all insurable improvements constructed on the Common Property title to which is or is not vested in the Association against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief, in the maximum insurable amount to cover the full replacement cost (or such other amounts, if any at all, as the Board of Director determines to be appropriate under the circumstances) of any repair or reconstruction in the event of damage or destruction from any such hazard. The Board of Directors of the Association or its manager shall also have the authority to obtain a public liability policy covering the Common Property and facilities thereon in such amounts and with such coverage as the Board of Directors shall from time to time deem prudent. The Association shall have the authority to obtain casualty and public liability

insurance for the parks to be located in the overall West Highlands development, whether or not title to such parks is vested in the Association. Premiums for all such insurance shall be common expenses paid for by the Association. Such insurance shall be governed by the following provisions:

(a) All policies shall be written with a company licensed to do business in the State of Georgia and holding a financial rating of Class VI, or better, by Best's Key Rating Guide.

(b) Exclusive authority to negotiate and accept settlement under policies hereafter in force shall be vested in the Association's Board of Directors.

(c) The Association's Board of Directors or its manager shall conduct an annual insurance review which shall include a replacement cost appraisal, without respect to depreciation, of all insurable improvements constructed on the Common Property.

(d) The Association's Board of Directors or its manager shall be required to make every reasonable effort to secure insurance policies that will provide the following: (1) a waiver of subrogation by the insurer as to any claims against the Association, its Board of Directors, its manager, or its Members and their respective families, tenants, employees, agents and guests, with respect to property coverage, except for arson and fraud, and of any defenses based on co-insurance; (2) a waiver by the insurer of its right to repair or reconstruct instead of paying cash; (3) that the policies cannot be canceled, invalidated or suspended on account of the conduct of any one or more Members or on account of the conduct of any director, officer or employee of the Association or its manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time after within which the defect may be cured by the Association, its agent mortgagee or any Member; and (4) that all liability insurance shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Lot Owner because of the negligent acts of the Association or other Lot Owners. The Association shall not maintain any insurance policy which: (i) under the terms of the insurer's charter, by-laws or the policy allows contributions or assessments to be made against the Association or any Lot Owner or such Owner's mortgagee; (ii) under the terms of the insurer's charter, by-laws or the policy allows loss payments to be contingent upon action by the insurer's Board of Directors, policyholders or members; or (iii) includes any limiting clauses (other than insurance conditions) which could prevent any Lot Owner or such Owner's mortgagee from collecting insurance proceeds.

**Section 6.2. Insurance Trustee.** All casualty insurance policies purchased by the Association shall provide that proceeds covering property losses shall be paid to an insurance trustee, which shall be the Association, or a bank or other financial institution having trust powers with offices in Georgia, as may from time to time be approved by the Board of Directors of the Association, which insurance trustee is herein sometimes referred to as the "Depository."

**Section 6.3. Insurance for the Lot Owner.** Each Lot Owner shall be responsible for procuring all insurance applicable to the residence and other improvements located on such Owner's Lot and all such other insurance for the Lot Owner as such Owner deems appropriate. The obligation to obtain such insurance and all costs thereof shall be the sole responsibility of the Lot Owner and not the Association.

**Article 7.**  
**Condemnation**

**Section 7.1. General.** Whenever any part of the Common Property title to which is vested in the Association shall be taken by any authority having the power of condemnation or eminent domain, the award made for such taking shall be payable to the Association, and unless otherwise provided by law at the time of such taking, any award made therefor shall be deposited by the Association with the Depository and disbursed for such purposes as the Board of Directors of the Association shall from time to time determine to be in the best interest of the Association.

**Article 8.**  
**Rights of the Association**

**Section 8.1. Services.** The Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Development, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. If the Association enters into a management agreement, such agreement shall be subject to the provisions of Section 10.2 hereof. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Development or the enforcement of this Declaration.

**Section 8.2. Personal Property and Real Property for Common Use.** The Association, through action of its Board of Directors, may acquire and hold tangible and intangible personal property and real property, and may, subject to the provisions of this Declaration, dispose of the same by sale or otherwise.

**Section 8.3. Rules and Regulations.** Reasonable rules and regulations concerning the use of the Common Property and facilities located thereon may be made and amended from time to time by the Board of Directors of the Association; provided that copies of such regulations and amendments thereto shall be furnished by the Association to all Lot Owners and, upon request, shall be made available for inspection during the normal business hours or under other reasonable circumstances by the holder of any first mortgage on a Lot. Such regulations shall be binding upon the Lot Owners, their families, tenants, guests, invitees, and agents, until and unless such regulation, rule or requirement be specifically overruled, canceled or modified in a regular or special meeting by the vote of Owners (other than Declarant) holding a majority of the total votes in the Association and by the vote of the Declarant so long as the Declarant shall have the unexpired option to annex additional property to the terms herein as elsewhere provided. Failure to abide by such regulation, rule or requirement shall be grounds for an action to recover damages, or obtain injunctive and equitable relief or both, in addition to any other right or remedy provided in this Declaration.

**Section 8.4. Implied Rights.** The Association may exercise any other right or privilege given to it expressly by this Declaration or other PUD Constituent Documents, and every other right or privilege reasonably to be implied from the existence or any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

## Article 9. Assessments

**Section 9.1. Purpose of Assessments.** The assessments provided for herein shall be used for the purpose of promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and occupants of Lots in the Development and in particular, the common fund may be assessed to cover the following: (i) management fees and expenses of administering the Association; (ii) common utility bills and charges for other common services; (iii) cost of any policies of insurance purchased by the Association, including fire and other hazard coverage for the Common Property, public liability coverage for the Association, including its officers and directors, and such other insurance coverage as the Board of Directors determines to be in the interest of the Association and Lot Owners; (iv) construction, maintenance, repair, replacement and operation of the detention facilities serving the Development; (v) acquisition, improvement, maintenance, repair, replacement and operation of properties, services and facilities devoted to such purposes and related to the Common Property, and including but not limited to the payment of costs associated with the maintenance of the parks located within the overall West Highlands at Perry Boulevard development as required by the Cost Sharing Agreement, and the payment of repair, replacement and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof; (vi) the addition to and maintenance, repair and replacement of all utility lines, systems and facilities, or portions thereof, and other improvements and systems which pursuant to the terms hereof are the responsibility of the Association to maintain, repair and replace; and (vii) the establishment and maintenance of one or more reasonable reserve funds for such purposes as to cover the repair and replacement of Common Property and common systems and facilities, unforeseen contingencies or deficiencies, or for emergency expenditures or such other matters as may be authorized from time to time by the Board of Directors.

**Section 9.2. Creation of the Lien and Personal Obligation for Assessments.** Each Owner of any Lot within the Development, by the acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay to the Association assessments which shall be fixed, established and collected from time to time as herein provided. Such assessments, together with such interest thereon and costs of collection thereof as herein provided, shall be a charge on and a continuing lien upon the Lot against which each such assessment is made. The lien for unpaid assessments shall lapse and be of no further effect as to assessments or installments thereof, together with interest applicable thereto, if a claim of lien therefore is not filed in the office of the Clerk of Superior Court of the County in which the Lot is located within one (1) year after the date upon which the assessment, or installment thereof, first became due and payable. The claim of lien shall be substantially in the form attached hereto as Exhibit "C" and by this reference made a part hereof. Such a claim of lien shall also secure all assessments or portions thereof, together with interest applicable thereto, which come due thereafter until the claim of lien is canceled of record. Also, irrespective of whether the lien therefore shall be valid or enforceable, each Owner shall be personally liable for the portion of any assessment coming due while he is the Owner of the Lot and his grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance, but without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefor; provided, however, that if such grantor or grantee shall request a statement from the Association in accordance with the provisions of Section 9.7(c), such grantee, his successors, successors-in-title and assigns shall not be liable for, nor shall the Lot conveyed be subject to a lien for, any unpaid assessments against such grantor in excess of the amount set forth in such written statement, if any. Any person who becomes the Owner of a Lot as purchaser at a judicial or foreclosure sale conducted with respect to a first mortgage on the Lot, or pursuant to any proceeding in lieu of the foreclosure of such

mortgage, shall be liable only for assessments coming due after the date such person so acquires title to the Lot. Further, it is hereby specifically provided that any first mortgagee who obtains title to the Lot pursuant to the remedies provided in the mortgage or foreclosure of the mortgage (or deed in lieu thereof) shall not be liable for such Lot's unpaid dues or charges which accrue prior to the acquisition of title to such Lot by the Mortgagee.

**Section 9.3. Regular Annual Assessments.** It shall be the duty of the Board of Directors of the Association, at least thirty (30) days prior to the Association's annual meeting, to prepare a budget covering the estimated costs of operating the Association during the coming year. Such budget (and the assessments levied to satisfy the same) shall make provision for the build-up and maintenance of an adequate reserve fund for repair and replacement of those portions of the Common Property and utility lines, systems and facilities that must be repaired or replaced on a periodic basis. This provision is for the benefit of, and is intended to be relied upon by all mortgagees holding first mortgages on any Lot in the Development. The Board shall cause the budget, and the assessment to be levied against each Lot Owner for the following year, to be delivered to each Lot Owner at least fifteen (15) days prior to the annual meeting. The budget and assessments therefor shall become effective unless (i) the proposed budget for the ensuing calendar year exceeds the immediately preceding annual budget by a percentage greater than the percentage increase in the Cost of Living (as defined in Exhibit "A," Section (d)), during the twelve (12) month period next preceding the date upon which the Board of Directors shall so determine the budget for the ensuing calendar year; and, (ii) such proposed budget is disapproved at the annual meeting by a vote of members of the Association representing at least a majority (more than 50%) of the total votes of the entire membership. In the event the proposed budget is not approved as aforesaid or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall be determined at a subsequent special meeting called pursuant to the provisions of Section 9.5 below, the budget in effect for the then current year shall continue for the succeeding year. Each Lot Owner shall pay an initial capitalization fee of \$500.00 and a regular annual assessment of \$300.00 per year payable in accordance with Section 9.7 hereof. Subsequent homeowners will not be responsible for the payment of an initial capitalization fee but will be responsible for the payment of the annual assessment as stated above.

**Section 9.4. Special Assessments.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only, provided that any such special assessments shall have the assent of members of the Association representing at least a majority (more than 50%) of the votes of the entire membership other than Declarant and by Declarant so long as Declarant shall have the unexpired option to annex additional property to the terms of this Declaration and/or right to control the Association as herein elsewhere provided.

**Section 9.5. Specific Assessments.** The Board shall have the power to levy specific assessments as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including any expense for which the Board has not previously exercised its authority under this Section. Fines levied pursuant to this Declaration and the costs of maintenance performed by the Association for which the Owner is responsible shall be specific assessments. The Board of Directors may also specifically assess Owners for Association expenses as follows: (i) expenses of the Association which benefit less than all of the Lots may be specifically assessed equitable among all of the Lots which are benefited according to the benefit received; and (ii) expenses of the Association which benefit all Lots,

but which do not provide an equal benefit to all Lots, may be assessed equitably among all Lots according to the benefit received.

**Section 9.6. Notice of Meetings.** Written notice of any meeting called for the purpose of taking any action authorized under Sections 9.3 or 9.4 shall be given to all members not less than fifteen (15) days or more than sixty (60) days in advance of the meeting. Such notice shall be given by personally delivering the same to any individual designated by a member to the Secretary of the Association, or by mailing a copy thereof by U.S. Certified Mail, postage prepaid, return receipt requested, to the last known place of residence or to such other address as may be furnished by such member to the Secretary of the Association. Notice shall be considered given when personally delivered to any such designated individual or when delivered by mail at such address, as the case may be. Any member may waive notice of the meeting by doing so in writing before or after the meeting. Attendance at a meeting, either in person or by proxy, shall of itself constitute a waiver of notice.

**Section 9.7. Uniform Rate of Assessment.** Except as otherwise provided in Sections 9.8, 9.9 and 9.11, both annual and special assessments must be fixed at a uniform rate for all Lots. Provided, however, that Lots which contain fee-simple Townhome Units (as opposed to single family detached residences) may be assessed differently from other Lots as determined by the Declarant or the Board of Directors.

**Section 9.8. Annual Assessments and Initial Funding Fee for Townhome Unit.** The Association may levy additional assessments and an increased initial funding fee against the Townhome Units in excess of the amounts assessed against single family lots in order to fund the actual and estimated expenses incurred by the Association for the primary benefit of the Townhome Unit Owners, including without limitation, maintenance required to be performed by the Association with respect to property within the Townhome Units.

**Section 9.9. Special Assessments for the Townhome Units.** In addition to the annual assessments and special assessments authorized above, the Association may levy, in any assessment year, an additional special assessment against the Townhome Units, provided that any such special assessment shall have the assent of the Townhome Unit Owners representing at least a majority (more than 50%) of the votes of the total Townhome Unit Owners other than Declarant, and by Declarant, so long as Declarant shall have the unexpired option to annex additional property to the terms of this Declaration and/or right to control the Association as herein elsewhere provided.

**Section 9.10. Assessment; Due Dates.**

(a) The annual assessment payable to the Association, as provided for in this Article 9, shall commence as to each Lot on the date upon which the Lot is conveyed to an Owner (other than Declarant) (such date being hereinafter sometimes referred to as the "Commencement Date"). There shall be no proration of the first annual assessment payable to the Association regardless of the number of days remaining in the calendar year as of the Commencement Date. Unless otherwise provided by the Association's Board of Directors, the annual assessment for each Lot shall become due and payable in full to the Association on the first day of January of each calendar year and shall be paid to the Association when due without further notice from the Association.

(b) The special assessments payable to the Association, as provided for in this Article 9, shall be due on the date(s) specified by the Association's Board of Directors.

(c) The Association shall, upon demand at any time, furnish to any Owner liable for any such assessment a certificate in writing signed by either the President or Treasurer of the Association, or by the manager of the Association, if any, setting forth whether the same has been paid. A reasonable charge, as determined by the Association, may be made for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

(d) The Board of Directors of the Association shall have the right to waive all or any portion of any annual assessment, and, except as otherwise provided in Section 9.9, such waiver shall be uniform as to all Lots.

**Section 9.11. Effect of Non-Payment of Assessments; Remedies of the Association.** Any assessment, or portion thereof, not paid when due shall be delinquent. If the same is not paid within five (5) days after the due date, then a late charge equal to the greater of Ten Dollars (\$10.00) or ten percent (10%) of the amount of each assessment or installment thereof not paid when due shall also be due and payable to the Association. If any assessment or portion thereof is delinquent for a period of more than five (5) days, then, if not paid within ten (10) days after written notice is given to the Lot Owner to make such payment, the entire unpaid balance of the assessment may be accelerated at the option of the Board of Directors and be declared due and payable in full. Any assessment or portion thereof not paid when due shall bear interest from the date of delinquency until paid at the maximum legal rate. The Board of Directors of the Association may suspend the voting rights of the Lot Owner and right to use the recreational facilities, if any, situated on the Common Property during the period in which any assessment or portion thereof remains unpaid and may bring an action at law against the Lot Owner or Owners personally obligated to pay the same or foreclose its lien against such Owner's Lot, in which event interest, costs and reasonable attorney's fees may be added to the amount of such assessment or portion thereof which is past due. All payments on account shall be applied first to interest, late charges, and then to the assessment lien first due. All interest collected shall be credited to the common expense fund. Each Lot Owner, by his acceptance of a deed or other conveyance to a Lot, vests in the Association the right and power to bring all actions against him personally for the collection of such charges as a debt and to foreclose the aforesaid lien against his Lot in the same manner as other liens for the improvements of real property. The lien provided for in this Article 9 shall be in favor of the Association and shall be for the benefit of all Lot Owners. The Association shall have the power to bid on the Lot at any judicial or foreclosure sale and to acquire, hold, lease, encumber, and convey the same. No Lot Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Property and facilities located thereon or abandonment of his Lot.

**Section 9.12. Priority of Lien.** The lien of the assessments provided for in this Article 9 shall be prior and superior to all other liens except only (a) ad valorem taxes and (b) all sums unpaid on a first mortgage on the Lot, if any. The sale or transfer of any Lot which is subject to a first mortgage pursuant to the judicial sale of foreclosure thereof, or pursuant to any proceeding in lieu of foreclosure, shall extinguish the lien of such assessments as to the payments thereof which become due prior to such sale or transfer. No sale or transfer shall relieve the acquirer of title, and the successors-in-title and assigns thereof from liability for any assessment thereafter becoming due on the Lot or from the lien thereof. Provided, however, the Association may at any time, either before or after a first mortgage is placed on a Lot, waive, relinquish or quit-claim in whole or in part the right of the Association to assessments provided for herein with respect to such Lot coming due during the same while such Lot is or may be held for liquidation by the first mortgagee pursuant to such sale or transfer.



**Section 9.13. Lots Owned by Declarant.** With respect to Lots owned by Declarant which have occupied residences located thereon, Declarant shall pay annual and special assessments, if any, on the same basis as other Owners of Lots in the Development. With respect to Lots owned by Declarant which are unimproved or have been partially completed and/or have unoccupied, completed residences located thereon, Declarant shall pay no assessments, whether annual or special.

**Section 9.14. Exempt Property.** The following property subject to this Declaration shall be exempt from the assessments, charges and liens created herein: (i) all properties dedicated to and accepted by any governmental authority; and (ii) the Common Property; and (iii) Lots owned by Declarant except as expressly provided in the first sentence of the immediately preceding Section. No land or improvements devoted to dwelling use shall be exempt from said assessments, charges and liens except as expressly provided in Section 9.10 above.

## **Article 10. Administration**

**Section 10.1. Responsibility for Administration.** The maintenance, repair, replacement and operation of the Common Property and facilities located thereon, as well as the maintenance, repair and replacement of utility systems and facilities and other improvements as herein provided, shall be the responsibility of the Association, subject to the terms of the Cost Sharing Agreement. Such administration shall be governed by this Declaration, the Articles of Incorporation and by-laws of the Association, and the Cost Sharing Agreement, as amended from time to time. The powers and duties of the Association shall be those set forth in said documents, together with those reasonably implied to effect their respective purposes, and shall be exercised in the manner provided therein.

**Section 10.2. Management Agreements.** The Association's Board of Directors may enter into such professional management agreements as it may deem necessary or advisable for the Association's jurisdiction. Provided, however, that so long as Declarant has the right to appoint and remove members of the Board of Directors and Officers of the Association, any professional management agreement (or any other contract or lease, including any contract providing for services by the Declarant) must provide that the same is terminable by either party for cause upon thirty (30) days written notice thereof and without cause or payment of a termination fee on ninety (90) days or less written notice; such agreement may not exceed one (1) year, renewable by agreement of the parties for successive one (1) year periods. This provision is for the benefit of, and is intended to be relied upon by all mortgagees holding first mortgages on any Lot in the Development. All costs and expenses incident to the employment of a manager shall be common expenses of the Association payable from the common expense fund. Any such management agreement may provide that, during his tenure, the person with whom the Association contracts for such administration and operation (herein sometimes referred to as the "Manager") shall be authorized and responsible for exercising all powers and performing all duties of the Association, excepting only those powers and duties specifically and exclusively assigned or reserved to the officers, directors or members of the Association by this Declaration and the Association's Articles of Incorporation or by-laws. The Board of Directors may require that such Managers be bonded. Each Lot Owner hereby agrees to be bound by the terms and conditions of all management agreements entered into as hereinabove provided.

**Section 10.3. Limitation of Liability; Indemnification.** Notwithstanding the duty of the Association to maintain, repair and replace the Common Property and facilities thereon as well as the utility systems and facilities and other improvements as herein provided, the Association shall not be liable for injury or damage caused by any latent condition of such property and facilities nor for injury or

damage caused by the elements, its members or other persons, nor shall any officer or director of the Association be liable to any of its members for injury or damage caused by such officer or director in the performance of his duties due to any mistake of judgment, negligence, or otherwise, except for their own willful misconduct or bad faith. Each officer or director of the Association shall be indemnified by the Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon him in connection with any proceeding in which he may be a party, or in which he may become involved, by reason of his being or having been such an officer or director, whether or not he is such an officer or director at the time such expenses and liabilities are incurred, except in such cases wherein the officer or director is adjudged guilty of willful misconduct or bad faith in the performance of his duties.

**Section 10.4. Disclosure of Financial Records.** Upon request, the Association shall be required to make available for inspection by Lot Owners and any holder of a first mortgage on a Lot during normal business hours or under other reasonable circumstances, current copies of the Declaration, the Cost Sharing Agreement, Articles of Incorporation and by-laws of the Association and any amendments thereto, and the books, records and financial statements of the Association. Any holder of a first mortgage, upon written request to the Association, will be entitled to receive a financial statement of the Association for the immediately preceding fiscal year.

#### **Article 11.**

#### **Architectural Control and Use Restrictions**

To assure a community of congenial Owners and thus protect the value of the Lots, the Lots which are subjected to this Declaration shall be subject to the architectural control and use restrictions set forth in Exhibit "D" attached hereto and by reference made a part hereof. Every grantee of any interest in any property located within the Development, by acceptance of a deed or other conveyance of such interest, agrees that such architectural control and use restrictions may be enforced in accordance with the provisions of this Declaration, or as otherwise provided by law.

#### **Article 12.**

#### **Annexation of Additional Property**

##### **Section 12.1. Annexation Without Membership Approval.**

(a) As the owner thereof, or if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege and option from time to time and at any time until all the real property described in Exhibit "E" has been subjected by Declarant to this Declaration or until that date which is ten (10) years from the date this Declaration is filed for record in the office of the Clerk of the Superior Court of the County in which the Development is located, whichever first occurs, to subject all or any portion of the real property described in said Exhibit "E" attached hereto to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the office of the Clerk of the Superior Court of the County in which the Development is located a supplementary declaration in respect to the property being annexed. Any such annexation shall be effective upon the filing for record of such supplementary declaration unless otherwise provided therein. Declarant intends to annex hereto the property contained in the Declarant's West Highlands at Perry Boulevard land plan for the development, as amended from time to time, which property is a portion of the property described in Exhibit "E," and certain other property in the general area of the West Highlands at Perry Boulevard development

However, inclusion of property on Declarant's land plan or in Exhibit "E" shall not obligate the Declarant to subject such property to the Declaration, nor shall exclusion of other property from the initial land plan bar Declarant from subjecting such other property to the Declaration. Any annexation shall be effective upon the filing for record of a supplementary declaration executed by the Declarant unless a later effective date is provided therein. As long as covenants applicable to the real property previously subjected to this Declaration are not materially changed and as long as rights of existing Owners are not adversely affected, the Declaration may unilaterally amend this Declaration to reflect the different character of any such annexed real property. If any land is not subjected to this Declaration, Declarant's reserved rights shall not imposed any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land, nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent owner thereof, whether or not such uses are consistent with the covenants and restrictions imposed hereby.

(b) Additional Covenants, Restrictions and Easements. The Declarant may subject any portion of the property submitted to this Declaration initially or by supplementary declaration to additional covenants, restrictions and easements and/or modify the applicability of the covenants, restrictions and easements contained in this Declaration as to such property.

(c) Withdrawal of Property. Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant to this Article 12 for the purpose of removing any portion of the Development then owned by Declarant or the Association from the coverage of this Declaration, to the extent originally included in error or as a result of any changes whatsoever in the plans for the Development, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Development.

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

**Section 12.2. Annexation With Membership Approval.** Subject to the consent of the owner thereof, upon the consent of members of the Association representing at least seventy-five percent (75%) of the votes of the entire membership, the Association may annex other real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the office of the Clerk of the Superior Court of the County in which the Development is located a supplementary declaration in respect to the property being annexed. Any such supplementary declaration shall be signed by the President and Secretary of the Association and, subject to the provisions of Section 13.6(c) Article 13 hereof, any such annexation shall be effective upon the filing for record of such supplementary declaration unless otherwise provided herein. Provided, however, any of the foregoing provisions of this Section, which may be construed to the contrary notwithstanding, if Declarant has the unexpired option to annex additional property to the terms of this Declaration and/or the right to control the Association, no such annexation of other real property so approved by members of the Association shall be effective unless the supplementary declaration annexing such other real property shall also be signed or consented to in writing by Declarant.

**Article 13.**  
**Townhome Neighborhood**

**Section 13.1. General.** The provisions set forth in this Article shall be applicable only to the Townhome Units within any portion of the Development designated as a "Townhome Neighborhood" and shall be in addition to the covenants, conditions, restrictions and easements set forth in this Declaration.

**Section 13.2. Maintenance.**

(a) Association Maintenance in a Townhome Neighborhood. In addition to the maintenance responsibilities of the Association described in Section 5.2 hereof; the Association shall also be responsible for:

(i) periodic treatment of all exterior walls and foundations of the Townhome Units for termites; provided, however, that the Association shall not be liable if such treatment proves to be ineffective;

(ii) maintaining all the landscaping in the yard of each Townhome Unit, which maintenance shall include, but shall not be limited to, mowing of lawns, pruning of shrubbery, weed control, removal and replacement of dead trees and shrubs.

(iii) pressure cleaning of sidewalks and driveways;

(iv) maintaining, repairing and replacing as necessary, any irrigation equipment (including, without limitation, any sprinklers, pumps, wells, water lines and time clocks, wherever located) serving the yards of Townhome Units, except that the Association shall have no responsibility for any sprinklers or other irrigation equipment installed by the Owner or occupant of any Townhome Unit; and

(v) the private streets, alleys and parking areas located within a Townhome Neighborhood.

(b) Yard Maintenance. The Association shall maintain and keep in good repair the landscaping improvements located on the exterior portions of the Townhome Neighborhood. The Board of Directors in its sole discretion may leave portions of the Townhome Neighborhood as undisturbed natural areas and may change the landscaping in the Townhome Neighborhood at any time and from time to time or may, with the consent of the Declarant, change the level of yard maintenance performed or for example maintain front yards only. Any common irrigation system installed by the Declarant, an Approved Builder or the Association shall be Common Property, operated, maintained, repaired and replaced by the Association. The deed of conveyance of any Lot shall not include any right, title or interest in such irrigation system, if any. The Board of Directors may promulgate rules setting forth the extent of landscaping maintenance to be performed by the Association and the rights of Owners with respect to adding or modifying landscaping improvements, including, for example, allowing seasonal flowering plants in certain areas of the Townhome Neighborhood at the expense of the Owner. In the event that the Owner of a Townhome Unit obtains approval to construct a fence in accordance with Section 7.16 of this Declaration, the Association shall no longer be obligated to maintain the landscaping within enclosed portions of the Townhome Unit and such landscaping shall be the sole responsibility of the Owner.

(c) Party Walls. Each wall or fence whether built as part of the original construction of the Townhome Units or added pursuant to Article 6 hereof which shall serve and separate any two (2) adjoining townhome Units shall constitute a party wall or fence and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto. The cost of reasonable repair and maintenance of a party wall or fence shall be shared by the Owners who make use of the wall or fence in equal proportions. If a party wall or fence is destroyed or damaged by fire or other casualty, then any Owner who has benefited by the wall or fence may restore it, and the other Owner who is benefited by the wall or fence shall contribute one-half of the cost of restoration, without prejudice, however, to the right of any Owner to call for a larger contribution from any other Owner under any rule of law regarding liability for negligent or willful acts or omissions. In the event of any dispute arising concerning a party wall or fence, or under the provisions of this Section, each party shall appoint one (1) arbitrator. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor by the Board of Directors, the Board shall appoint an arbitrator for the refusing party. The arbitrators thus appointed shall appoint one (1) additional arbitrator and the decision by a Majority of all three (3) arbitrators shall be binding upon the parties and shall be a condition precedent to any right of legal action that either party may have against the other.

### **Section 13.3. Use Restrictions and Rules.**

(a) Heating of Units in Colder Months. In order to prevent breakage of water pipes during colder months of the year resulting in damage to Townhome Units, increased common expenses, and increased insurance premiums or cancellation of insurance policies due to numerous damage claims, the thermostats within all Townhome Units shall be maintained with heating operating and at a minimum of fifty degrees (50°) Fahrenheit during the months of October, November, December, January, February, March, and April. Owners shall take all steps possible on a timely basis to keep heating equipment, including, but not limited to, the thermostat, in good working order and repair. At any time during the months specified above when the heating equipment is not working, the Owner shall immediately inform the Owners of the other Townhome Units of this failure of the equipment and of the time needed in order to repair the equipment and shall take reasonable steps to keep the Townhome Unit heated sufficiently to prevent the breakage of water pipes.

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

**Section 13.4. Easements.**

(a) Easement for Encroachment and Overhang. There is hereby reserved to the Declarant for the benefit of each Townhome Unit a reciprocal appurtenant easement for encroachment and overhang between adjacent Townhome Units and between a Townhome Unit and adjacent Common Property due to the original construction or the unintentional placement or settling or shifting of the improvements including, but not limited to, retaining walls, downspouts and gutters, constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than two (2) feet, as measured from any point on such common boundary; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, Occupant, or the Association, other than the Declarant or Approved Builder in the original construction of the Units.

(b) Easements for Driveway Encroachment. There is hereby reserved appurtenant easements for encroachment as between each Townhome Unit and such portion or portions of the driveway serving an adjacent Townhome Unit due to the placement or settling or shifting of the driveway constructed, reconstructed, or altered thereon (as approved under Article 6 of the Declaration) to a distance of not more than two (2) feet, as measured from any point on the common boundary between adjacent Townhome Units along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner or Occupants after the initial construction of improvements by Declarant or Approved Builder.

(c) Townhome Unit Owner – Easement for Utilities. Declarant hereby establishes for the benefit of each Townhome Unit a nonexclusive easement for access to and installation, maintenance, repair, replacement and use of all pipes, wires, cables, conduits, utility lines, flues and ducts serving such Townhome Unit and situated in, on or under any other Townhome Unit or the Common Property. In the event that any Owner desires access to another Townhome Unit to install, maintain, repair or replace any utility pipe, wire, cable, conduit, utility line, flue or duct, the Owner shall contact the Owner of such other Townhome Unit(s) at least two (2) days in advance of the date that access is needed and attempt to agree on a convenient date and time for access by the Owner and the Owner's contractors. Access in emergency situations shall be granted immediately upon request. Any Owner of a Townhome Unit to which access is needed under this Section shall not unreasonably withhold, condition or delay such access. Rights exercised pursuant to this easement shall be exercised with a minimum of interference to the quiet enjoyment of affected Townhome Units, reasonable steps shall be taken to protect such Townhome Units and the property of the Owners and Occupants thereof, and damage shall be repaired by the Person causing the damage at its sole expense.

(d) Easement for Private Streets, Sidewalks and Signs. Declarant hereby grants, conveys, declares, creates, imposes and establishes a perpetual, non-exclusive right-of-way easement for vehicular and pedestrian access, ingress and egress over and across the private streets located within a Townhome Neighborhood. At such time as one or more subdivision plats for the property submitted to this Declaration are recorded in the real estate records of the Office of the Clerk of Superior Court of Fulton County, Georgia, any reference to private streets shall then and thereafter mean a reference to the private streets as actually constructed and depicted on the recorded subdivision plat. The right-of-way easement herein granted shall permit joint usage of such easement by (a) the Owners and Occupants, (b) the legal representatives, successors and assigns of the Owners, and (c) invitees and licensees of the Owners and Occupants. Declarant hereby expressly reserves for itself, its successors and assigns, all

rights and privileges incident to the ownership of the fee simple estate of any right-of-way easement area which are not inconsistent with the rights and privileges herein granted, including, without limitation, the right to maintain one or more proprietary signs on the easement area and the right to grant additional non-exclusive easements to third parties, over, under and across the easement area. Declarant hereby reserves for the benefit of Declarant and grants to the Association as Common Property, the perpetual nonexclusive right and easement upon, over and across those utility easement areas and private streets and roads for the installation, maintenance, and use of such streets and roads, sidewalks, traffic directional signs, grading for proper drainage of said streets and roads, and related activities and improvements.

(e) Easement for Guest Parking Areas. Declarant may, but shall not be obligated to, create additional guest parking areas on Common Property and show the same on the recorded plats for the Townhome Neighborhood or identify the same as such on the parking spaces themselves ("Guest Parking Areas"). Declarant hereby grants, conveys, declares, creates, imposes and establishes an easement in perpetuity upon, over and across the Guest Parking Areas (as they may exist from time to time) within the Townhome Neighborhood for temporary parking by guests, invitees and licensees of the Owners and Occupants. Owners and Occupants of Townhome Units shall not be entitled to park vehicles owned or used on a regular basis by said Owners or Occupants on the Guest Parking Areas. Declarant hereby expressly reserves for itself, its successors and assigns, all rights and privileges incident to the ownership of the fee simple estate of any parking easement area which are not inconsistent with the rights and privileges herein granted. All parking in Guest Parking Areas shall be subject to the provisions of Section 7.5 hereof and such additional rules and regulations as the Board of Directors may adopt.

#### **Article 14. General Provisions**

**Section 14.1. Control by Declarant.** Notwithstanding any other language or provision to the contrary in this Declaration or in the Articles of Incorporation or by-laws of the Association, Declarant hereby retains the right to appoint and remove any member or members of the Board of Directors of the Association and any officer or officers of the Association. By an express written instrument to that effect, but not by implication, Declarant may relinquish such right in whole or in part at any time and from time to time. Further, the Declarant's authority so to appoint and remove members of the Board of Directors and officers of the Association shall in no event extend beyond and shall in all cases expire upon, the first of the following to occur:

(a) Unless Declarant at that time has an unexpired option to annex additional property to the terms of this Declaration pursuant to Section 12.1 hereof, the date as of which one hundred percent (100%) of all Lots in the Development shall have been conveyed by Declarant to Lot Owners other than a person or persons constituting the Declarant; or

(b) The expiration of fifteen (15) years after the recording of this Declaration; or

(c) The surrender by Declarant of the authority to appoint and remove members of the Board of Directors and officers of the Association by document executed and recorded by Declarant; or

(d) Upon the expiration of the period of the Declarant's right to control the Association pursuant to the foregoing provisions to the Lot Owners (including Declarant if Declarant then owns one or more Lots in the Development).

Every grantee of any interest in the Development, by acceptance of a deed or other conveyance of such interest, agrees that the Declarant shall have the authority to appoint and remove members of the Board of Directors and officers of the Association in accordance with the foregoing provisions of this Section.

**Section 14.2. Enforcement.** Each Lot Owner shall comply strictly with this Declaration, the by-laws and rules and regulations of the Association, as any of the same may be amended from time to time, and with the covenants and restrictions set forth in this Declaration. In the event of a violation or breach, or threatened violation or breach, of any of the same, Declarant, the Association or any aggrieved Lot Owner, jointly and severally, shall have the right to proceed at law or in equity to compel compliance therewith or to present a threatened violation or breach thereof. Should the Declarant or the Association employ legal counsel to enforce any of the foregoing, all costs incurred in such enforcement, including a reasonable fee for counsel, shall be paid by the violating Lot Owner. Inasmuch as the enforcement of the provisions of this Declaration and the by-laws and such rules and regulations is essential for the effectuation of the general plan of development contemplated hereby and for the protection of present and future Lot Owners, it is hereby declared that any breach thereof cannot be adequately compensated by recovery of damages, and that Declarant, the Association, or any aggrieved Lot Owner, in addition to all other remedies, may require and shall be entitled to the remedy by injunction to restrain any such violation or breach or threatened violation or breach. No delay, failure or omission on the part of Declarant, the Association or any aggrieved Lot Owner in exercising any right, power or remedy herein provided shall be construed as an acquiescence therein nor shall be deemed to be a waiver of the right to exercise such right, power or remedy thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its exercise or enforcement. No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against Declarant or the Association for or on account of any failure to bring any action or on account of any violation or breach, or threatened violation or breach of the provisions of this Declaration, or the by-laws, or such rules and regulations, however long continued, or for imposing provisions which may be unenforceable.

**Section 14.3. Rights of Third Parties.** This Declaration shall be recorded in the public real estate records of the Clerk of the Superior Court of the County in which the Development is located and shall inure to the benefit of Declarant, the Association, the Lot Owners and the holders of mortgages affecting any property within the Development, their respective heirs, legal representatives, successors-in-title, successors and assigns, and by such recording no owner of property not located within the Development shall have any right, title or interest whatsoever in the Development or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and, subject to the right of Declarant and mortgagees as herein provided, the Lot Owners shall have the right to cancel, extend, modify, amend or otherwise change the provisions of this Declaration without the consent, permission or approval of any such owners.

**Section 14.4. Duration.** The provisions of this Declaration shall run with and bind the land and shall be and remain in effect perpetually to the extent permitted by law. Provided however, so long as Georgia law limits to twenty (20) years the period during which covenants restricting lands to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land for a period of twenty (20) years from the date this Declaration is filed for record in the office of the Clerk of the Superior Court of the County in which the Development is located, after which time such provisions shall be automatically extended, if permitted by law, for successive periods of twenty (20) years (or the maximum period allowed by applicable law, if less), unless an instrument, signed by at least seventy-five



percent (75%) of the then Owners (other than Declarant) of record of Lots within the Development and their first mortgagees and by Declarant if Declarant is then the Owner of one or more Lots within the Development, has been recorded in the office of the Clerk of said Court agreeing to terminate or change such provisions in whole or in part. Every purchaser or grantee of any interest in any real property subject to this Declaration, by acceptance of a deed or other conveyance therefor, hereby agrees that the provisions of this Declaration may be extended and renewed as provided in this section.

**Section 14.5. Amendment.** This Declaration may be amended unilaterally at any time and from time to time by Declarant (i) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration, (iii) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots subject to 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 is subject to this Declaration, provided any such amendment shall not adversely affect the title to any Owner's Lot or materially alter or change any Lot Owner's right to use and enjoyment of the Common Property as set forth herein unless any such Lot Owner so affected hereby shall consent thereto in writing.

Further, this Declaration may be amended at any time and from time to time by an agreement signed by at least two-thirds (2/3) of the Owners of record of Lots within the Development; provided, however, that during such time as there is property subject to the terms of this Declaration in accordance with Section 12.1 hereof and/or the Declarant has the right to control the Association pursuant to Section 13.1, such amendment shall require the agreement of Declarant and Lot Owners to which two-thirds (2/3) of the votes of the Association appertain, exclusive of any vote or votes appertaining to any Lot or Lots then owned by Declarant. No amendment to the provisions of this Declaration shall alter, modify, change or rescind any right, title, interest or privilege herein granted or accorded to the holder of any mortgage encumbering any Lot or Common Property affected thereby unless such holder shall consent in writing thereto. Any such amendment shall not become effective until the instrument evidencing such change has been filed for record in the office of the Clerk of said Court. The written consent thereof of any mortgage holder affected thereby shall also be filed with such amendment. Every purchaser or grantee of any interest in any real property now or other conveyance therefor, hereby agrees that this Declaration may be amended as provided in this Section.

(a) **Challenges to Amendment.** Any action to challenge the validity of an amendment adopted as provided herein must be brought within one (1) year of the effective date of such amendment. No action to challenge such amendment may be brought after such time.

**Section 14.6. Obligations to Mortgagees.** The following provisions are established for the benefit of the holders of mortgages encumbering any Lots now or hereafter located within the Development. In the event of any conflict between other provisions in any of the PUD Constituent Documents and the following provisions, the latter shall control:

(a) Each Lot Owner shall be obligated to furnish to the Association the name and address of the holder of any first mortgage encumbering such Owner's Lot and the Association shall be obligated to notify the holder of any such first mortgage, upon written request therefore, of any default by

such Owner in the performance of any of such Owner's obligations (including failure to pay assessments as and when due) under the PUD Constituent Documents which is not cured within sixty (60) days from the date of any such default. Each Lot Owner hereby consents to such notification to any such mortgagee.

(b) The holder of any first mortgage on a Lot will, upon written request to the Association, be entitled to written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings. Further, upon written request to the Association, any holder of a first mortgage on a Lot will be entitled to timely written notice of any proposed action pursuant to this Declaration, the Articles of Incorporation or by-laws of the Association which requires the consent of a specified percentage of mortgage holders.

(c) Notwithstanding the provisions of Section 12.2 hereof, the Association shall not annex additional lands to this Declaration and to the jurisdiction of the Association without the written consent of at least a majority of the holders of all first mortgages encumbering any of the Lots located within the Development.

(d) Unless at least two-thirds (2/3) of the first mortgagees (based upon one vote for each first mortgage owned) or Owners (other than Declarant) of the individual Lots in the Development have given their prior written approval, the Association shall not be entitled to:

(i) by act or omission to seek to abandon, partition, subdivide, encumber, sell or transfer the Common Property owned, directly or indirectly, by the Association for the benefit of the Lots in the Development. The granting of easements, licenses and permits for public utilities or for other public purposes consistent with the intended use of the Common Property by the association and its members shall not be deemed a transfer within the meaning of this clause;

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

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

(iv) fail to maintain fire and extended coverage on insurable Common Property title to which is vested in the Association on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost);

(v) use hazard insurance proceeds for losses to any Common Property title to which is vested in the Association for other than the repair, replacement or reconstruction of such Common Property.

(e) First mortgagees of Lots may, jointly or individually, pay taxes or other charges which are in default and which may or have become a charge against any of the Common Property title to which is vested in the Association and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy, for such Common Property and first mortgagees making such payments shall be owed immediate reimbursement thereof from the Association.

(f) No provision of the PUD Constituent Documents shall be construed to give a Lot Owner or any other party, priority over any rights of first mortgagees of Lots in the Development pursuant to their mortgage in the case of a distribution to Lot Owners of insurance proceeds or condemnation awards for losses to or a taking of Common Property. Upon written request to the Association, the holder of any first mortgage on a Lot will be entitled to timely written notice of any condemnation or casualty loss affecting such Lot or a material portion of the Development.

(g) Upon written request to the Association, the holder of any first mortgage on a Lot will be entitled to timely written notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

(h) The rights, privileges and benefits granted and accorded to first mortgagees under the provision of this Section shall be amplification and not in limitation of any rights, privileges or benefits granted or accorded to first mortgagees under any other provisions of the PUD Constituent Documents. Also, notwithstanding any provision of any of the PUD Constituent Documents which may be construed to the contrary, the provisions of this Section shall control in the event of any conflict between any of the provisions of the Section and any other provisions in any of the PUD Constituent Documents. Further notwithstanding any provision in any of the PUD Constituent Documents which may be construed to the contrary, no amendment to any of the PUD Constituent Documents shall alter, modify, change or rescind any right, privilege or benefit granted or accorded thereunder to any mortgagee holding a first mortgage on any Lot in the Development unless such first mortgagee shall consent thereto in writing. Provided, however, to the extent that the consent of Declarant is required for any action to be taken pursuant hereto, then such consent shall be in addition to and not in lieu of any other consent required by this Section.

**Section 14.7. Mergers or Consolidations.** Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties of the Association pursuant to a merger. The surviving or consolidated association may then administer the covenants, conditions and restrictions established by this Declaration, including any supplementary declaration hereto, as well as any other covenants, conditions and restrictions which were then being administered by any other association involved in such merger or consolidation.

**Section 14.8. Sale or Easement of Association Property.** In consideration of Declarant's provision to the Association of property and property rights, the following shall prevail if the Association agrees to the sale or granting of an easement of any of the real property controlled by the Association:

(a) Declarant shall have the first right of refusal in the sale or granting of an easement with respect to any Association property.

(b) All proceeds from the sale or easement of Association property shall be divided with Declarant who shall received eighty percent (80%) of the sale or easement amount.

**Section 14.9. Access Points.** Declarant shall have the absolute right to acquire access points from Association property to adjoining property. This right shall not be diminished or in any other way affected by the application or the failure to apply the provisions of Article 12.

**Section 14.10. Notices.** Notices provided for in this Declaration or the Articles of Bylaws shall be in writing, and shall be addressed to an Owner at the address of the Lot and to the Declarant or the Association at the address of their respective registered agent on file with the Secretary of State of the State of Georgia. Any Owner may designate a different address for notices to such Owner by giving written notice to the Association. Notices addressed as above shall be mailed by United States Registered or Certified Mail, return receipt requested, postage paid, or delivered in person, including delivery by private courier service. The time period in which a response to any such notice must be given or any action taken with respect thereto, shall commence to run from the date of personal delivery or the date of receipt shown on the return receipt. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice sent.

**Section 14.11. Perpetuities.** If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

**Section 14.12. Indemnification.** To the fullest extent allowed by the Georgia Nonprofit Corporate Code, and in accordance therewith, the Association shall indemnify every current and former officer, director and committee member against any and all expenses, including, but not limited to, attorney's fees, imposed upon or reasonably incurred by any officer, director or committee member 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, director or committee member may be a party by reason of being or having been an officer director committee member. The officers, directors and committee members 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, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association, and the Association shall indemnify and forever hold each such officer, director and committee member 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, directors or committee member, or former officer, director or committee member, may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

**Section 14.13. Agreements.**

(a) Subject to the prior approval of Declarant, all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors, shall be binding upon all Owners, their heirs, legal representatives, successors, assigns and others having an interest in the Development or the privilege of possession and enjoyment of any part of the Development.

(b) Declarant intends to assign its rights and delegate its duties and obligations to the Association in and to any and all agreements required by governmental authorities, or deemed necessary appropriate by Declarant, in connection with the development of all or any portion of the real property submitted, or to be submitted, to the Declaration from time to time, including without limitation, utility easements, access easements, indemnification agreements, flood plain development agreements, detention pond maintenance agreements, lake maintenance agreements, and dam maintenance agreements. Upon

such Assignment the Association shall assume and agree to perform all of the duties and obligations of Declarant thereunder; and the Association shall hold Declarant harmless from and against any liability arising under such instruments from and after the effective date of such assignment. Unless Declarant has assigned its rights and delegated its duties and obligations to the Association under any such agreement within three (3) years following the execution of such agreement, the assignment, delegation and assumption shall be automatically deemed to have occurred on the third anniversary thereof.

**Section 14.14. Variances.** Notwithstanding anything to the contrary contained herein, the Board of Directors shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto, if it determines that waiver of application or enforcement of the provision in a particular case is warranted and would not be inconsistent with the overall scheme of development for the Development.

**Section 14.15. Litigation.** No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least seventy-five percent (75%) of the Owners and the consent of the Declarant. This Section shall not apply 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 herein, (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 unilaterally by the Declarant as provided herein or is approved by the percentage votes necessary to institute proceedings as provided above.

**Section 14.16. Interpretation.** In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which will best effect the intent of the general plan of development set forth herein. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective.

**Section 14.17. Gender and Grammar.** The singular whenever used herein shall be construed to mean the plural when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

**Section 14.18. Severability.** Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

**Section 14.19. Captions.** The captions of each Article and Section hereof as to the contents of each Article and Section are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular Article or Section to which they refer.

[Signatures on Following Page]

IN WITNESS WHEREOF, the Declarant herein has caused this instrument to be executed, under seal, as of the 1<sup>st</sup> day of February, 2005.

Signed, sealed and delivered in the presence of:

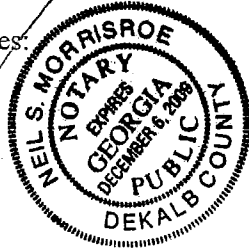
BROCK BUILT, LLC

Judy Bogart  
Unofficial Witness

By: Steven M. Brock  
Steven M. Brock, Manager

[Signature]  
Notary Public  
My Commission expires:

[Notary Seal]



**EXHIBIT "A"**

**DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR WEST HIGHLANDS AT PERRY BOULEVARD**

**Definitions**

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

(a) "Architectural Control Committee" shall mean, as follows: So long as there shall exist an unexpired option of Declarant to annex additional property to the provisions of the Declaration as provided in Article 12 hereof, the Architectural Control Committee shall mean Declarant, or one or more persons appointed by Declarant to perform the functions of the Architectural Control Committee. After Declarant shall cease to have an unexpired option to annex additional property, the Architectural Control Committee shall mean the Board of Directors of the Association, or three or more persons appointed by the Board of Directors of the Association to perform the functions of the Architectural Control Committee. Persons appointed to the Architectural Control Committee need not be Lot Owners and persons appointed by Declarant or the Board of Directors of the Association shall serve at the pleasure of the Declarant or the Board of Directors, as the case may be.

(b) "Association" shall mean and refer to the West Highlands Homeowners Association, Inc, a non-profit Georgia corporation, its successors and assigns.

(c) "Board of Directors" or "Board" means the appointed or elected body of the Association, vested with the authority to manage the affairs of the Association under Georgia Nonprofit Corporation Code, O.C.G.A. § 14-13-101, *et seq.*

(d) "Common Property" shall mean all real and personal property or any interest therein, together with the facilities and improvements located thereon, now or hereafter owned by the Association, or in which the Association leases or otherwise holds possessory or use rights in, for the common use and enjoyment of the Owners. Additionally, "Common Property" shall mean any system, structure, facility or the like within the Development, whether or not owned by the Association or located on property of the Association, which pursuant to the terms of this Declaration, is the responsibility of the Association to maintain and repair. The term "Common Property" shall specifically include, without limitation, entry features to the Development, entry security gates, if any, paved shared alleyways, driveways and Roadways, entry and directional signage serving the Development, landscaped medians and greenbelts, drainage facilities and the parks and related improvements which are located within the overall West Highlands at Perry Boulevard development, whether or not such parks and improvements are owned by the City of Atlanta, the Housing Authority of the City of Atlanta, Georgia or the Association.

(e) "Cost of Living," for the purpose of Section 9.3 of this Declaration, shall be determined by reference to the Atlanta, Georgia Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics, U.S. Department of Labor. Should the publication of such Consumer Price Index be discontinued, the "Cost of Living" shall be determined by reference to a comparable successive index published by the U.S. government as selected by the Board of Directors of the Association.

(f) "Cost Sharing Agreement" shall mean a Cost Sharing Agreement for West Highlands at Perry Boulevard between Declarant and Columbia Residential, LLC, a Georgia limited liability company, and its affiliated entities, recorded in the Fulton County, Georgia Records.

(g) "Declarant" shall mean and refer to (i) Brock Built, LLC, a Georgia limited liability company, or (ii) any successor-in-title to the said entity to all or some portion of the property then subjected to this Declaration, provided in the instrument of conveyance to any successor-in-title, such successor-in-title is expressly designated as the "Declarant" hereunder by the grantor of such conveyance, which grantor shall be the "Declarant" hereunder at the time of such conveyance.

(h) "Development" shall mean and refer to: (i) that certain real property described in Exhibit "B" attached hereto and (ii) such additions thereto as may be made by Declarant by supplementary declaration of all or part of the real property described in Exhibit "E" attached hereto, and (iii) such additions thereto as may be made by the Association by supplementary declaration of other real property.

(i) "Lot" shall mean and refer to any plot of land comprising a single dwelling site designated on a plat or survey recorded in the office of the Clerk of the Superior Court of Fulton County, Georgia, which is subject to this Declaration. The definition of a "Lot" shall include a Townhome Unit.

(j) "Master Association Declaration" means a master Declaration of Protective Covenants for the overall West Highlands at Perry Boulevard development, which declaration may be recorded in the Fulton County, Georgia records.

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

(l) "Neighborhood" means each separately developed and denominated residential area within the Development which has been so designated in the recorded subdivision plat for the Development, or in one or more supplementary declarations. By way of illustration and not limitation, a townhouse development, cluster home development, or single-family detached housing development might be designated as a separate Neighborhood. The Declarant shall have the right to designate separate Neighborhood status and change the Neighborhood status of any previously designated Neighborhood for any property in the Development. A Neighborhood may (but is not required to) have a separate incorporated mandatory membership Neighborhood association.

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

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

(o) "PUD Constituent Documents" shall mean and refer to this Declaration, the Master Association Declaration, the Articles of Incorporation, by-laws and rules and regulations of the Association, the West Highlands Design Guidelines, and any other documents that pertain to the Development.



(p) "Townhome Unit" shall mean any plot of land within the Development, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single dwelling site for a townhome which will be attached by one or more party walls to another townhome. Where the dwelling on a Townhome Unit is attached by a party wall to one or more other dwellings, the boundary between Townhome Units shall be a line running along the center of the party wall separating the Townhome Units. The ownership of each Townhome Unit shall include the exclusive right to use and possession of any and all portions of the heating and air conditioning units which are appurtenant to and serve each Townhome Unit (including, but not limited to, compressors, conduits, wires and pipes) and any porch, deck, patio, steps, wall, roof, foundation, sunroom or any similar appurtenance as may be attached to a Townhome Unit when such Townhome Unit is initially constructed. The ownership of each Townhome Unit shall include, and there shall automatically pass with the title to each Townhome Unit as an appurtenance thereto, whether or not separately described, membership in the Association and all of the rights and interests of an Owner in the Common Property, as herein provided.

**EXHIBIT "B"**

**DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR WEST HIGHLANDS AT PERRY BOULEVARD**

**Legal Description**

All that tract or parcel of land lying and being in Land Lot 227 of the 17<sup>th</sup> District, Fulton County, Georgia, and being Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56 and 57, West Highlands Subdivision, as per plat recorded in Plat Book 254, Pages 53-54, Fulton County, Georgia Records, which plat is incorporated herein and made a part hereof by reference.

EXHIBIT "C"

DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR WEST HIGHLANDS AT PERRY BOULEVARD

Notice of Lien

STATE OF GEORGIA  
COUNTY OF FULTON

PURSUANT to the provisions of Article 9 of that certain Declaration of Covenants, Conditions, Restrictions and Easements for West Highlands at Perry Boulevard, recorded in Deed Book \_\_\_\_\_, Page \_\_\_\_\_, Fulton County, Georgia Records, the West Highlands Homeowners Association, Inc., claims a lien against the following described property of \_\_\_\_\_, to-wit:

THIS claim of lien is for unpaid and delinquent assessments in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_), which, under and pursuant to the provisions of said Declaration, are past due as of the date hereof, together with interest thereon, late charges and costs of collection, including attorney's fees, as provided in said Declaration. In accordance with the provisions of said Declaration, this claim of lien is filed within one (1) year after said assessment became due. Also, this claim of lien is to secure any and all assessments, together with interest thereon, late charges and costs of collection, including attorney's fees, which may hereafter come due to the West Highlands Homeowners Association, Inc., in respect to the above described property until this claim of lien is canceled of record.

THIS \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

WEST HIGHLANDS HOMEOWNERS  
ASSOCIATION, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT "D"****DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS FOR  
WEST HIGHLANDS AT PERRY BOULEVARD****Architectural Control And Use Restrictions**

The following architectural, maintenance and use restrictions shall apply to each and every Lot subjected to this Declaration:

Section 1. Residential Use. All Lots shall be used for residential purposes exclusively. No business or business activity shall be carried on upon any Lot at any time except with the written approval of the Declarant; provided, however, that nothing herein shall prevent Declarant and Declarant's subsidiaries, affiliates and employees from using any Lot owned or leased by Declarant for the purpose of carrying on business related to the Development, including sale and rental of Lots in the Development; provided, further, private offices may be maintained in residences located on any of the Lots so long as such use is incidental to the primary resident's use of the Lot and is approved by the Board of Directors of the Association.

Section 2. Sale and Leasing of Lots. The right of any Lot Owner (including Declarant) to sell, transfer, or convey the Owner's Lot shall not be subject to any right of first refusal or any similar restriction in favor of the Association under the provisions of this Declaration. No Lot Owner shall be permitted to lease his Lot or the residence thereon for transient or hotel purposes, no separate rooms, floors or other areas within a dwelling may be leased separately, and no Lot Owner may lease less than his entire Lot and the residence thereon. No more than three (3) unrelated persons may live in a leased dwelling on a Lot. Any lease agreement shall have a minimum term of twelve (12) months and shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and the by-laws and rules and regulations of the Association and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be required to be in writing. Other than the foregoing, there shall be no restriction on the right of any Lot Owner to lease his Lot and the residence thereon. Provided, however, prior to the commencement of any such lease, the Lot Owner shall give the Association written notice of the name of the lessee and the term of the lease.

Any of the foregoing provisions of this Section which may be construed to the contrary notwithstanding, Declarant shall have the unqualified right to lease any Lot after completion of construction of the residence and other improvements thereon, so long as such Lot is unsold and owned by Declarant. Also, any of the foregoing provisions of this Section which may be construed to the contrary notwithstanding, anyone who becomes the owner of a Lot at a judicial or foreclosure sale conducted with respect to a mortgage on such Lot, or as transferee pursuant to any proceedings in lieu thereof, shall have the unqualified right to lease such Lot so long as such Lot is owned by such person who acquired title thereto in such manner; provided, however, the occupancy of any Lot by any lessee of Declarant or such acquirer of title shall be otherwise subject to the provisions of this Declaration and the by-laws and rules and regulations of the Association.

Section 3. Subdivision of Lots. No Lot shall be subdivided, or its boundary lines changed, except with the prior written approval of the Architectural Control Committee and by Declarant, so long as Declarant shall have an unexpired option to annex additional property to the terms of this Declaration and/or the Declarant has the right to control the Association. Declarant, however, hereby expressly reserves the right to replat any one (1) or more unsold Lots in order to create a modified residential Lot or Lots, and to take such other steps as reasonably may be necessary to make such replatted Lot or Lots suitable as a building site or sites. All of the covenants and restrictions set forth herein shall apply to each such Lot, if any, so created. Any such subdivision, boundary line change or replatted Lot shall not be in violation of any applicable governmental rules, regulations or ordinances.

Section 4. Architectural Control. To preserve the architectural appearance of the Development, after the purchase of any Lot from Declarant, no building, fence, wall, road, driveway, parking area, tennis court, swimming pool, or other structure or improvement of any kind shall be commenced, constructed, erected, placed, maintained, altered, changed, added to, modified or reconstructed on any Lot, nor shall any exterior addition to, or alteration, change or modification to an existing structure or improvement, or the color thereof, including without limitation, patio covers and antennas, be constructed, erected, placed, or maintained on any Lot, until the plans and specifications therefor, showing the nature, kind, shape, height, materials, color and location of same, shall have been submitted to and approved in writing by the Architectural Control Committee. "Improvement" shall mean and include any improvement, change, alteration or modification of the appearance of a Lot from the state existing on the date of the conveyance of such Lot by Declarant to a Lot Owner. Before taking any action requiring approval under this Section, and before making any application to any lender for a loan to finance such construction, a Lot Owner shall submit to the Architectural Control Committee a construction schedule and two complete sets of plans and specifications showing the nature, kind, shape, height, materials, color and location of the proposed improvements, as well as, where applicable, a site plan, landscape layout, floor plans, exterior elevations and exterior materials, colors and finishes. No changes or deviations in or from such plans and specifications as approved shall be made without the prior written approval of the Architectural Control Committee. No alteration, change or modification in the exterior appearance of any building, structure or other improvement shall be made without like approval by the Architectural Control Committee. All such plans and specifications shall be submitted in writing over the signature of the Owner of the Lot or such Owner's authorized agent. Such plans and specifications shall be considered as submitted to the Architectural Control Committee when personally delivered to any individual who is then a member of the Architectural Control Committee or to the individual who is then the President of the Association (irrespective of whether such President is then a member of such Committee) in which event it shall be the responsibility of such President to deliver such plans and specifications to the Architectural Control Committee. Approval shall be based, among other things, on adequacy of site dimensions; conformity and harmony of external design with proposed or existing neighboring structures or improvements; effect of location and use of improvements on neighboring property improvements, operations and uses; relation of topography, grade and finished ground elevation of the Lots to that of neighboring property; proper facing and aesthetic beauty; quality of building materials to be used and conformity of the plans and specifications to the West Highlands Design Guidelines dated September 27, 2004, prepared by Keyfer & Associates, Inc., as amended from time to time (the "Design Guidelines"), and the purposes and general plan and intent of this Declaration. In any event, the Architectural Control Committee shall have the right to require any Lot Owner to remove or alter any improvement which has not received approval or is built or installed other than in accordance with the plans and specifications approved by the Architectural Control Committee. In the event the Architectural Control Committee fails to approve or disapprove in writing plans or specifications within thirty (30) days after the same have been submitted in the manner aforesaid, non-

compliance with the terms of this Section shall be assumed and disapproval of such plans and specifications shall be deemed to have been effectively delivered by the Architectural Control Committee to the Owner of the Lot or such Owner's authorized agent who had submitted the plans and specifications to the Architectural Control Committee. Neither Declarant, nor any member of the Board of Directors of the Association, nor any member of the Architectural Control Committee, shall be responsible or liable in any way for any defects in any plans or specifications approved by the Architectural Control Committee, nor for any defects in any work done according to any plans and specifications approved by the Architectural Control Committee, or in respect to which the Architectural Control Committee failed to take any action regarding approval or disapproval. Further, neither Declarant, nor any member of the Board of Directors of the Association, nor any member of the Architectural Control Committee, shall be liable in damages to anyone submitting plans or specifications for approval under this Section, or to any Owner of property affected by this Declaration 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 to the Architectural Control Committee for approval agrees, by submission of such plans and specifications, and every Owner of any Lot agrees, that he will not bring any action or suit against Declarant, or any member of the Architectural Control Committee, or Board of Directors of the Association to recover for any such damage.

(a) Design Guidelines. The Design Guidelines are intended to provide guidance to Owners and builders in the Development regarding matters of particular concern to those reviewing plans and specifications hereunder. The Design Guidelines are not the exclusive basis for decisions on architectural matters, and compliance with the Design Guidelines does not guarantee approval of any application. Declarant shall have sole and full authority to create and amend the Design Guidelines as long as it owns any portion of the Development, notwithstanding a delegation of reviewing authority to the Association, unless Declarant also delegates the power to amend the Design Guidelines to the Association. Upon termination or delegation of Declarant's right to amend, the Board shall have the authority to amend the Design Guidelines.

Any amendments to the Design Guidelines shall be prospective only and shall not apply to or require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive. All structures and improvements constructed upon a Lot shall be constructed in strict compliance with the Design Guidelines in effect at the time the plans for such improvements are submitted for approval, unless a variance is granted in writing. The Design Guidelines shall be available to Owners and builders who seek to engage in development or construction within the Development.

Section 5. Construction by Declarant. Nothing in this Declaration shall limit the right of Declarant in the development of the property which is now or hereafter subjected to this Declaration to complete such construction and make such improvements to such property as Declarant shall deem advisable prior to the sale thereof by Declarant.

Section 6. No Trespass or Breach. Whenever the Architectural Control Committee or the Association is permitted by these covenants and restrictions to take any action on the property of any Lot Owner, entering the property and taking such action shall not be deemed to be a trespass or a breach of these covenants and restrictions.

Section 7. Nuisances. It shall be the responsibility of each Lot Owner to prevent the development of any unclean, unhealthy, unsightly or unkempt condition of buildings or grounds on his Lot or Lots, irrespective of whether the same is occupied or vacant. No Lot shall be used in whole or in part for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or material be kept upon any Lot that will emit foul or obnoxious odors, or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort or serenity of the occupants of surrounding Lots. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which shall constitute a nuisance to the Development. There shall not be maintained any plants or animals, or device or thing of any sort, whose activities or existence, in the sole discretion of the Architectural Control Committee, is in anyway noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other Lots in the Development by the Owners thereof.

Section 8. Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly, and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkempt conditions, shall not be pursued or undertaken on any property within the Development.

Section 9. Animals and Pets. No animals, livestock or poultry of any kind may be raised, bred, kept or permitted on any Lot, with the exception of dogs, cats or other usual and common household pets in reasonable number, provided that said pets are not kept, bred or maintained for any commercial purposes, are not permitted to roam free, and, in the sole discretion of the Board of Directors of the Association, do not endanger the health, make objectionable noise or constitute a nuisance or inconvenience to the Owners of other Lots. No structure for the care, housing or confinement of any pets shall be maintained so as to be visible from neighboring Lots. An Owner shall not allow any animal waste to remain on the Common Property maintained by the Association.

Section 10. Vehicles, Parking, Mobile Homes, Etc. Vehicles shall be parked only in appropriate parking spaces serving a Lot or other designated areas, if any. No on-street parking, other than in connection with special events as approved by the Declarant and the Board of Directors, shall be permitted within the Development. All parking shall be subject to such rules and regulations as the Board may adopt. The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, golf carts, trucks, campers, buses, vans and automobiles. The term "parking areas" shall refer to the number of garage parking spaces and the spaces located in the driveway of each Lot. All homes shall contain a garage; carports shall not be permitted. Garage doors should be kept closed at all times, except during times of ingress and egress from the garage. 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 if it is not licensed or if it is in a condition such that it is incapable of being operated upon the public highways. After such five (5) day period, such vehicle may be removed from the Development by the Board of Directors. No eighteen-wheel trucks or the cabs of such trucks or trucks with a load capacity in excess of three-quarters of a ton shall be parked, kept or stored within the Development except during the time reasonably necessary to provide service or delivery within the Development.

If any vehicle is parked on any portion of the Development in violation of this Section or in violation of the Association's rules and regulations, the Board or agent of the Association may place a notice on the vehicle specifying the nature of the violation and stating that after twenty-four (24) hours the vehicle may be towed. The notice shall include the name and telephone number of the person or entity

that will do the towing and the name and telephone number of a person to contact regarding the alleged violation. If twenty-four (24) hours after such notice is placed on the vehicle the violation continues or thereafter occurs again with six (6) months of such notice, the Board or agent of the Association may have the vehicle towed in accordance with the notice, without further notice to the Owner or use of the vehicle.

If a vehicle is parked in a fire lane, is blocking another vehicle, is obstructing the flow of traffic, is parked on any grassy area, or otherwise creates a hazardous condition, no notice shall be required and the Board or agent of the Association may have the vehicle towed immediately. If a vehicle is towed in accordance with this subparagraph, neither the Association nor any officer or agent of the Association shall be liable to any person for any claim of damage as a result of the towing activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow.

Mobile homes, motor homes, truck campers and boat trailers may be kept or parked on a Lot only if the same shall be kept or parked in such a manner as to be concealed from view of neighboring Lots and streets. Further, although not expressly prohibited hereby, the Board of Directors may prohibit mobile homes, motor homes, truck campers, trailers of any kind, motorcycles, motorized bicycles, motorized go-carts and other such contrivances, or any of them, from being kept, placed, stored, maintained or operated upon any portion of the property within the Development if in the opinion of the Board of Directors such prohibition shall be in the best interest of the Development.

Section 11. Mail Boxes and Property Identification Markers. Declarant reserves to the Architectural Control Committee the right to approve the location, color, size, design, lettering and all other particulars of mail and newspaper boxes, if any, and of name signs for such boxes, as well as property identification markers.

Section 12. Signs. No commercial signs, including "for rent" or "for sale" signs or advertising posters of any kind shall be erected, placed or maintained on any Lot, except as may be required by legal proceedings, or except only such signs as are hereinafter specified. The following signs shall be permitted on any Lot: professionally lettered builder or Realtor signs, or sign of the Lot Owner, also professionally lettered, advertising the Lot and residence located thereon, if any, for sale or rent; provided, however, that any such sign shall not be more than 18 x 24 inches in size and shall be securely, neatly and otherwise properly fastened to a standard signboard which shall be furnished upon request by the Architectural Control Committee; provided further, however, that no more than two such signs shall be erected, placed or maintained on any Lot at the same time. The foregoing provisions of this Section to the contrary notwithstanding, nothing herein shall be construed to prevent Declarant from erecting, placing or maintaining upon any Lot or permitting the erection, placing or maintaining by builders of residences, of such signs as Declarant may deem necessary or desirable for the rental or sale of the Lots and/or residences constructed thereon. Also, the provisions of this Section shall not apply to anyone who becomes the Owner of any Lot as purchaser at a judicial or foreclosure sale conducted with respect to a first mortgage or a transferee pursuant to any proceeding in lieu thereof. The Board of Directors of the Association may impose a fine of \$50.00 per day for display of any sign in violation of this Section which is not removed within twenty-four (24) hours after written demand is delivered to the Owner of the Lot.

Section 13. No Discrimination. No action shall at any time be taken by the Association or its Board of Directors which in any manner would discriminate against any Owner or Owners in favor of any other Owner or Owners.



Section 14. Governmental Regulations. All governmental building codes, health regulations, zoning restrictions and conditions, and the like applicable to the Development shall be observed. In the event of any conflict between any provision of any such governmental code, regulation or restriction and any provision of this Declaration, the more restrictive provision shall apply.

Section 15. Business Offices, Models, Etc. Notwithstanding any provisions contained in the Declaration to the contrary, it shall be expressly permissible for Declarant and/or a builder (if other than Declarant) of residences upon the Lots to maintain and carry on, upon such portion of the property within the Development as Declarant may deem necessary, such facilities and activities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction (if not already constructed) and the sale or rental of such residences, including, but without limitation, construction yards, construction trailers, business offices, signs, model residences and sales or rental offices. The right to maintain and carry on such facilities and activities shall include specifically the right to use residences owned by Declarant or such builder as model residences and offices for the sale or rental of residences in the Development.

Section 16. Antennas. No exterior antenna, receiving dish or similar apparatus of any kind for receiving or transmitting of radio or video signals shall be placed, allowed or maintained upon any portion of the Development, including any Lot, unless approved in accordance with the provisions of Section 4 hereof; provided, however, no such approval shall be necessary to install (1) antennas designed to receive direct broadcast satellite services, including direct-to-home satellite services, that are one meter or less in diameter; (2) antennas designed to receive video programming services via multi-point distribution services that are one meter or less in diameter or diagonal measurement; or (3) antennas that are designed and intended to receive television broadcast signals. Owners shall install any permitted antennae on the rear of the dwelling unless an acceptable quality signal cannot otherwise be obtained.

Section 17. Tree Removal. No trees that are more than four (4) inches in diameter at a point twelve (12) inches above the ground and no ornamental or flowering trees, including, but not limited to, dogwood trees, cottonwood trees, cherry trees or apple trees, regardless of diameter, shall be removed from a Lot without prior written approval pursuant to Section 4 hereof. Owners shall also comply with any local ordinance and zoning condition applicable to tree removal. In the event of a conflict between the provisions of this Section and any local ordinance or zoning condition, the more restrictive provision shall govern. This provision shall not apply to the removal of trees by the Declarant, the Association or by a builder in connection with construction approved under Section 4 hereof.

Section 18. Drainage. Catch basins, retention ponds, detention ponds, drainage swales and drainage easement areas are for the purpose of controlling the natural flow of water only. Owners shall not obstruct or alter the drainage flow across or from their Lot after location and installation of catch basins, retention ponds, detention ponds, drainage swales, storm sewers or storm drains without approval in accordance with the provisions of Section 4 hereof.

Section 19. Garbage Cans, Woodpiles, Etc. All garbage cans, woodpiles, air conditioning units, heat pumps, swimming pool pumps, filters and related equipment, and other similar items shall be located or screened so as to be concealed from view from neighboring streets and property. All rubbish, trash and garbage shall be regularly removed and shall not be allowed to accumulate. Declarant, however, hereby expressly reserves the right to dump and bury rocks on property within the Development as needed for efficient construction and to allow builders to bury rocks removed from a building site on such building

site. Trash, garbage, debris, or other waste matter of any kind may not be burned within the Development except by the Declarant or a builder.

Section 20. Firearms. The use or discharge of firearms in the Development is prohibited. The term "firearms" includes, without limitation, "B-B" guns, pellet guns and other guns of any type, regardless of size.

Section 21. Fences. No fence or fencing type barrier of any kind shall be placed, erected, allowed or maintained upon any part of the Common Property except as may be installed by the Association or upon any Lot without prior written approval in accordance with the provisions of Section 4 hereof. Guidelines detailing acceptable fence styles or specifications may be issued, but in no event may a chain link or barbed wire fence be approved; provided, however, the Declarant and the Association may erect any type of fence on the Common Property or elsewhere within the Development as they may deem appropriate or as necessary to satisfy the requirements of any law, regulation or governmental entity or for health and safety of Owners.

Section 22. Air-Conditioning Units. No window air-conditioning units may be installed.

Section 23. Lighting. Exterior lighting on any Lot visible from the street shall not be permitted, except for: (a) approved lighting as originally installed on a Lot; (b) one decorative light post; (c) street lights in conformity with an established street lighting program for the Development; (d) seasonal decorative lights; (e) front house illumination of model homes; or (f) other lighting approved under and pursuant to Section 4 hereof.

Section 24. Artificial Vegetation, Exterior Sculpture and Similar Items. No artificial vegetation shall be permitted on the exterior of any Lot. Exterior sculpture, fountains, flags or similar items must be approved under and pursuant to Section 4 hereof.

Section 25. Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless as an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Declarant, in accordance with the provisions of Section 4 hereof.

Section 26. Swimming Pools. No swimming pool shall be constructed, erected or maintained upon any Lot without prior written approval in accordance with the provisions of Section 4 hereof and in no event shall any above-ground swimming pool be permitted.

Section 27. Clotheslines. No exterior clotheslines of any type shall be permitted upon any Lot.

Section 28. Entry Features. Owners shall not alter, remove or add improvements to any entry features constructed by the Declarant on any Lot, or any part of any easement area associated therewith without prior approval in accordance with the provisions of Section 4 hereof.

Section 29. Window Treatments. No foil or other reflective materials shall be used on any windows for sunscreens, blinds, shades, or any other purpose. The side of all window treatments which can be seen at any time from the outside of any structure located on a Lot must be white or off-white.

Section 30. Outbuildings and Similar Structures. No structure of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, camper, shack, tent, garage, barn or other structure may be used as a residence, either temporarily or permanently, without written approval in accordance with the provisions of Section 4 hereof. However, this Section shall not be construed to prevent Declarant or a builder and those engaged in development, construction, marketing, property management or sales in the Development from using sheds, trailers or other temporary structures for any of the foregoing purposes. In addition, nothing in this Declaration shall be construed to prevent Declarant or any builder from developing, constructing, marketing or maintaining model homes or speculative housing within the Development.

Section 31. Wetlands and Streams. Except as herein provided, all wetlands and streams within the Development shall be aesthetic amenities used for storm water drainage only. The Association and/or the Declarant shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of the wetlands or streams within the Development. For this purpose, "wetlands" means any area labeled as wetlands on a recorded plat for the Development or otherwise designated as wetlands by the Declarant or the Board of Directors. No Owner shall have any right to place rocks, stones, trash, garbage, sewage, waste water, rubbish, debris, ashes or other refuse in, any wetlands or streams within the Development. Applicable governmental agencies and the Declarant and the Association shall have the sole right to control the water level of any body of water located within the Development and to control the growth and eradication of plants, fowls, reptiles, animals, fish and fungi in and around any wetlands and streams within the Development. Owners shall have no riparian or littoral rights with respect to the waters in any stream within the Development and shall not be permitted to withdraw water from any stream as may exist in the Development without the prior written consent of the Board of Directors.

**EXHIBIT "E"**

**DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR WEST HIGHLANDS AT PERRY BOULEVARD**

**Legal Description(s) of Additional Property**

Any and all property located within Land Lots 118, 225, 226, 227, 228, 245, 246, 247, and 248 of the 17<sup>th</sup> District of Fulton County, Georgia, and any other property located within a two (2) mile radius of the Development.

RETURN AFTER RECORDING TO:  
Clarence K. Lau, Esq.  
Winter Capriola Zenner, LLC  
3490 Piedmont Road, N.E.  
Suite 800  
Atlanta, Georgia 30305

Cross Reference: Deed Book 43506  
Page 699

**AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS FOR  
WEST HIGHLANDS AT PERRY BOULEVARD SUBDIVISION**

This Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for West Highlands at Perry Boulevard Subdivision (the "Amendment") is made as of the 17 day of November, 2015 by West Highlands Homeowners Association, Inc. (the "Association") with the consent of Brock Built, LLC, a Georgia limited liability company ("Declarant").

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

**WHEREAS**, that certain Declaration of Covenants, Conditions, Restrictions and Easements for West Highlands at Perry Boulevard Subdivision was recorded on September 22, 2006 in Deed Book 43506, Page 699, *et seq.* of the Fulton County, Georgia records; as amended by that certain First Supplemental Declaration of Covenants, Conditions, and Restrictions for West Highlands at Perry Boulevard Subdivision recorded on September 10, 2007, in Deed Book 45672, Page 22, *et seq.* of the Fulton County, Georgia records; as amended by that certain Second Supplemental Declaration of Covenants, Conditions, and Restrictions for West Highlands at Perry Boulevard Subdivision recorded on January 2, 2009, in Deed Book 47472, Page 270, *et seq.* of the Fulton County, Georgia records; as amended by that certain Third Supplemental Declaration of Covenants, Conditions, and Restrictions for West Highlands at Perry Boulevard Subdivision recorded on October 5, 2009, in Deed Book 48414, Page 685, *et seq.* of the Fulton County, Georgia records; as amended by that certain Fourth Supplemental Declaration of Covenants, Conditions, and Restrictions for West Highlands at Perry Boulevard Subdivision recorded on May 25, 2012, in Deed Book 51235, Page 539, *et seq.* of the Fulton County, Georgia records; as amended by that certain Fifth Supplemental Declaration of Covenants, Conditions, and Restrictions for West Highlands at Perry Boulevard Subdivision recorded on March 15, 2013, in Deed Book 52389, Page 72, *et seq.* of the Fulton County, Georgia records; as amended by that certain Sixth Supplemental Declaration of Covenants, Conditions, and Restrictions for West Highlands at Perry

Boulevard Subdivision recorded on August 28, 2013, in Deed Book 53069, Page 170, *et seq.* of the Fulton County, Georgia records; as amended by that certain Seventh Supplemental Declaration of Covenants, Conditions, and Restrictions for West Highlands at Perry Boulevard Subdivision recorded on December 17, 2013, in Deed Book 53428, Page 277, *et seq.* of the Fulton County, Georgia records; as amended by that certain Eighth Supplemental Declaration of Covenants, Conditions, and Restrictions for West Highlands at Perry Boulevard Subdivision recorded on May 8, 2014, in Deed Book 53791, Page 77, *et seq.* of the Fulton County, Georgia records; as amended by that certain Ninth Supplemental Declaration of Covenants, Conditions, and Restrictions for West Highlands at Perry Boulevard Subdivision recorded on September 30, 2014, in Deed Book 54208, Page 363, *et seq.* of the Fulton County, Georgia records (collectively, the “Declaration”);

**WHEREAS**, pursuant to Article 14, Section 14.5 of the Declaration, said Declaration may be amended by an agreement signed by at least two-thirds (2/3) of the Owners of record of Lots within the Development and the consent of Declarant;

**WHEREAS**, the following Amendment has been approved by the required majority of the Owners, as evidenced by the Certification of Approval attached hereto as Exhibit “A”, and made a part hereof;

**WHEREAS**, the Declarant has consented to this Amendment as evidenced by the Declarant Consent attached hereto and made a part hereof by this reference.

**NOW, THEREFORE**, the Declaration of Covenants, Conditions, Restrictions and Easements for West Highland at Perry Boulevard Subdivision is hereby amended as follows:

1. The Declaration is amended by deleting Section 14.1(b) in its entirety and replacing it instead with a new Section 14.1(b) which shall read as follows:

“(b) September 21, 2031 [twenty-five (25) years from the recording date of this Declaration];”

2. Except as otherwise defined herein, capitalized terms, as used in this Amendment, shall have the meanings ascribed to such terms in the Declaration.

3. In the event of any conflict or inconsistency between the provisions of this Amendment and the provisions of the Declaration or Bylaws, the provisions of this Amendment shall control.

4. Except as amended hereby, the Declaration, as previously amended, shall remain in full force and effect.

**[SIGNATURES BEGIN ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the Association hereby executes this Amendment under seal on the date and year first above written.

**WEST HIGHLAND HOMEOWNERS  
ASSOCIATION, INC.,  
A Georgia nonprofit corporation**

Signed, sealed and delivered  
in the presence of:

[Signature]  
Unofficial Witness  
[Signature]  
Notary Public

By: [Signature]  
President

Attest: [Signature]  
Secretary

My Commission Expires:



EXHIBIT "A"

CERTIFICATION OF APPROVAL

The undersigned officer of West Highlands Homeowners Association, Inc. hereby swears under oath that the above Amendment to the Declaration of Covenants, Conditions, Restrictions and Easements for West Highlands at Perry Boulevard Subdivision was approved by the required percentage of Owners of record of Lots within the Development.

**WEST HIGHLAND HOMEOWNERS  
ASSOCIATION, INC.,  
A Georgia nonprofit corporation**

Signed, sealed and delivered  
in the presence of:

[Signature]  
Unofficial Witness

[Signature]  
Notary Public

By: [Signature]  
President

Attest: [Signature]  
Secretary

My Commission Expires:





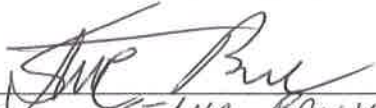
**CONSENT AND APPROVAL OF DECLARANT FOR  
AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND  
EASEMENTS FOR WEST HIGHLANDS AT PERRY BOULEVARD SUBDIVISION**

Brock Built, LLC, a Georgia limited liability company, hereby consents to and approves the foregoing Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for West Highlands at Perry Boulevard Subdivision. This consent and approval shall be effective as of the recording date of the Amendment.

Dated this 17 day of November, 2015.

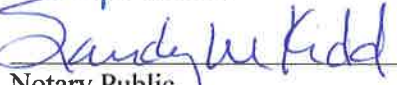
**DECLARANT:**

**BROCK BUILT, LLC**  
**A Georgia limited liability company**

By:   
Print Name: STEVE BROCK  
Print Title: MGR.

Signed, sealed and delivered  
In the presence of:

  
Unofficial Witness

  
Notary Public

My commission expires  
[Notary Seal]



Deed Book 55615 Pg 541  
Cathelene Robinson  
Clerk of Superior Court  
Fulton County, Georgia

RETURN AFTER RECORDING TO:  
Clarence K. Lau, Esq.  
Winter Capriola Zenner, LLC  
3490 Piedmont Road, N.E.  
Suite 800  
Atlanta, Georgia 30305

Cross Reference: Deed Book 43506  
Page 699

**SECOND AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS FOR  
WEST HIGHLANDS AT PERRY BOULEVARD SUBDIVISION**

This Second Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for West Highlands at Perry Boulevard Subdivision (the “**Amendment**”) is made as of the 28<sup>th</sup> day of December, 2016 by West Highlands Homeowners Association, Inc. (the “**Association**”) with the consent of Brock Built, LLC, a Georgia limited liability company (“**Declarant**”).

**WITNESSETH:**

**WHEREAS**, that certain Declaration of Covenants, Conditions, Restrictions and Easements for West Highlands at Perry Boulevard Subdivision was recorded on September 22, 2006 in Deed Book 43506, Page 699, *et seq.* of the Fulton County, Georgia records; as amended by that certain First Supplemental Declaration of Covenants, Conditions, and Restrictions for West Highlands at Perry Boulevard Subdivision recorded on September 10, 2007, in Deed Book 45672, Page 22, *et seq.* of the Fulton County, Georgia records; as amended by that certain Second Supplemental Declaration of Covenants, Conditions, and Restrictions for West Highlands at Perry Boulevard Subdivision recorded on January 2, 2009, in Deed Book 47472, Page 270, *et seq.* of the Fulton County, Georgia records; as amended by that certain Third Supplemental Declaration of Covenants, Conditions, and Restrictions for West Highlands at Perry Boulevard Subdivision recorded on October 5, 2009, in Deed Book 48414, Page 685, *et seq.* of the Fulton County, Georgia records; as amended by that certain Fourth Supplemental Declaration of Covenants, Conditions, and Restrictions for West Highlands at Perry Boulevard Subdivision recorded on May 25, 2012, in Deed Book 51235, Page 539, *et seq.* of the Fulton County, Georgia records; as amended by that certain Fifth Supplemental Declaration of Covenants, Conditions, and Restrictions for West Highlands at Perry Boulevard Subdivision recorded on March 15, 2013, in Deed Book 52389, Page 72, *et seq.* of the Fulton County, Georgia records; as amended by that certain Sixth Supplemental Declaration of Covenants, Conditions, and Restrictions for West Highlands at Perry Boulevard Subdivision recorded on August 28, 2013, in Deed Book 53069, Page 170, *et seq.* of the

Fulton County, Georgia records; as amended by that certain Seventh Supplemental Declaration of Covenants, Conditions, and Restrictions for West Highlands at Perry Boulevard Subdivision recorded on December 17, 2013, in Deed Book 53428, Page 277, *et seq.* of the Fulton County, Georgia records; as amended by that certain Eighth Supplemental Declaration of Covenants, Conditions, and Restrictions for West Highlands at Perry Boulevard Subdivision recorded on May 8, 2014, in Deed Book 53791, Page 77, *et seq.* of the Fulton County, Georgia records; as amended by that certain Ninth Supplemental Declaration of Covenants, Conditions, and Restrictions for West Highlands at Perry Boulevard Subdivision recorded on September 30, 2014, in Deed Book 54208, Page 363, *et seq.* of the Fulton County, Georgia records; and as amended by that certain Amendment to Declaration of Covenants, Conditions, and Restrictions for West Highlands at Perry Boulevard Subdivision recorded on December 2, 2015, in Deed Book 55615, Page 537, *et seq.* of the Fulton County, Georgia records (collectively, the "Declaration");

**WHEREAS**, pursuant to Article 14, Section 14.5 of the Declaration, said Declaration may be amended by an agreement signed by at least two-thirds (2/3) of the Owners of record of Lots within the Development and the consent of Declarant;

**WHEREAS**, the following Amendment has been approved by the required majority of the Owners, as evidenced by the Certification of Approval attached hereto as Exhibit "A", and made a part hereof;

**WHEREAS**, the Declarant has consented to this Amendment as evidenced by the Declarant Consent attached hereto and made a part hereof by this reference.

**NOW, THEREFORE**, the Declaration of Covenants, Conditions, Restrictions and Easements for West Highland at Perry Boulevard Subdivision is hereby amended as follows:

1. The Declaration is amended by deleting Section 9.3(b) in its entirety and replacing it with a new Section 9.3(b) which shall read as follows:

"(b) **Initiation Fee**. Upon each and every conveyance of a Lot within the Community, including the initial conveyance of a Lot by the Declarant or a builder to an Owner and all resales of a Lot to subsequent Owners, the transferee or grantee becoming the Owner of the Lot shall be obligated to pay to the Association, in addition to all other assessments levied under this Declaration, simultaneously upon such transfer or conveyance a non-refundable initiation fee in an amount equal to One Thousand, Two Hundred Fifty and No/100 Dollars (\$1,250.00) (hereinafter, the "**Initiation Fee**"). The Initiation Fee shall be collected and paid to the Association at the closing of each sale, transfer or conveyance of the Lot. All Initiation Fees shall be deposited and used as directed by the Board of Directors, including, without limitation, the payment of operating expenses and other expenses incurred by the Association pursuant to the provisions of this Declaration. The Initiation Fee shall constitute a specific assessment under the Declaration and shall be collected in the same manner provided in the Declaration for the collection of all other assessments. Notwithstanding the foregoing, the Initiation Fee shall not be due from any holder of any first mortgage on a Lot who becomes the Owner of a Lot through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage, but shall apply to the owner acquiring the Lot from the foreclosing Mortgagee. The Initiation Fee may be reviewed and increased on an annual basis, in the Board's sole discretion."

2. The Declaration is amended by deleting Section 9.13 in its entirety and replacing it with a new Section 9.13 which shall read as follows:

"9.13 **Lots Owned by Declarant**.

(a) Annual and Special Assessments. With respect to Lots owned by Declarant which have occupied residences located thereon, Declarant shall pay annual and special assessments, if any, on the same basis as other Owners of Lots in the Development. With respect to Lots owned by Declarant which are unimproved or have been partially completed and/or have unoccupied, completed residences located thereon, Declarant shall pay no assessments, whether annual or special.

(b) Declarant Capital Contribution Fee for Initial Sales. Upon each and every initial conveyance of a Lot by the Declarant to an Owner, the Declarant shall be obligated to pay to the Association, in addition to all other assessments levied under this Declaration, and simultaneously upon such transfer or conveyance, a non-refundable capital contribution fee in an amount equal to One Thousand, Seven Hundred Fifty and No/100 Dollars (\$1,750.00) (hereinafter, the "**Declarant Capital Contribution Fee**"). The Declarant Capital Contribution Fee shall be collected and paid to the Association at the closing of the initial sale, transfer or conveyance of a Lot. All Declarant Capital Contribution Fees shall be deposited and used as directed by the Board of Directors, including, without limitation, the payment of operating expenses and other expenses incurred by the Association pursuant to the provisions of this Declaration. The Declarant Capital Contribution Fee shall constitute a specific assessment under the Declaration and shall be collected in the same manner provided in the Declaration for the collection of all other assessments. The Declarant Capital Contribution Fee shall only apply to the initial sale of a Lot by the Declarant, and shall not apply to any subsequent transfers or conveyances of a Lot not owned by the Declarant."

3. Except as otherwise defined herein, capitalized terms, as used in this Amendment, shall have the meanings ascribed to such terms in the Declaration.

4. In the event of any conflict or inconsistency between the provisions of this Amendment and the provisions of the Declaration or Bylaws, the provisions of this Amendment shall control.

5. Except as amended hereby, the Declaration, as previously amended, shall remain in full force and effect.

**IN WITNESS WHEREOF**, the Association hereby executes this Amendment under seal on the date and year first above written.

**WEST HIGHLANDS HOMEOWNERS  
ASSOCIATION, INC.,  
A Georgia nonprofit corporation**

Signed, sealed and delivered  
in the presence of:

*Walter C. Boyer*

Unofficial Witness

*[Signature]*

Notary Public

My Commission Expires: *9/12/20*

[Notary Seal]



By: *[Signature]*  
Print Name: STEVE BROCK  
President

Attest: *[Signature]*  
Print Name: ADAM BROCK  
Secretary

EXHIBIT "A"

CERTIFICATION OF APPROVAL

The undersigned officer of West Highlands Homeowners Association, Inc. hereby swears under oath that the above Second Amendment to the Declaration of Covenants, Conditions, Restrictions and Easements for West Highlands at Perry Boulevard Subdivision was approved by the required percentage of Owners of record of Lots within the Development.

**WEST HIGHLANDS HOMEOWNERS  
ASSOCIATION, INC.,  
A Georgia nonprofit corporation**

Signed, sealed and delivered  
in the presence of:

*Walter C. Boyer*

Unofficial Witness

*Heather L. Fueston*

Notary Public

My Commission Expires: *9/12/20*

[Notary Seal]



By: *Steve Brock*  
Print Name: Steve Brock

President

Attest: *Adam Brock*  
Print Name: Adam Brock

Secretary

**CONSENT AND APPROVAL OF DECLARANT FOR  
AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND  
EASEMENTS FOR WEST HIGHLANDS AT PERRY BOULEVARD SUBDIVISION**

Brock Built, LLC, a Georgia limited liability company, hereby consents to and approves the foregoing Second Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for West Highlands at Perry Boulevard Subdivision. This consent and approval shall be effective as of the recording date of the Amendment.

Dated this 23 day of November, 2016.

**DECLARANT:**

**BROCK BUILT, LLC**  
A Georgia limited liability company

By: [Signature]  
Print Name: Steve Brock  
Print Title: MGR PRES

Signed, sealed and delivered  
In the presence of:

[Signature]  
Unofficial Witness

[Signature]  
Notary Public

My commission expires: 9/12/20  
[Notary Seal]

