

DECLARATION

OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (the "Declaration"), made this 30th day of ~~October~~²⁰⁰¹ 1999, by WILBAR DEVELOPERS, LLC ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Fulton County, Georgia, more particularly described in Exhibit "A", attached hereto and by this reference incorporated herein (the "Property");

WHEREAS, Declarant desires to ensure the continued attractiveness of the Property, to prevent nuisances upon the Property, and to preserve, protect and enhance the value of the Property, and, to this end, desires to subject the Property to the covenants, easements, conditions and restrictions hereinafter set forth, each of which are for the benefit of the Property and any subsequent owners of all or any portion thereof;

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value, desirability and viability of the Property, and which shall run with the Property and be binding on all parties having right, title or interest in and to the Property or any portion thereof, as well as their heirs, legal representatives, successors and assigns, and which shall inure to the benefit of each and every owner thereof.

ARTICLE I
DEFINITIONS

Section 1. "Architectural Committee" shall mean and refer to the Architectural Control Committee established by the Board of Directors, which Architectural Committee shall have the powers and duties described herein and in the By-laws.

Section 2. "Association" shall mean and refer to "WINGFIELD GATES HOMEOWNER'S ASSOCIATION, INC "; a Georgia non-profit membership corporation, its successors, transfers and assigns, established to own, operate and maintain the "Common Area," as that term is hereinafter defined.

Section 3. "Board of Directors" shall mean and refer to the Board of Directors of the Association, which Board of Directors shall be elected pursuant to the terms and conditions stated in the By-laws of the Association.

Section 4. "By-laws" shall mean and refer to the By-laws of the Association, originally adopted by the Board of Directors and as may be amended from time to time.

Section 5. "Common Area" shall mean and refer to all real property (including the improvements thereon and thereto) owned or to be owned by the Association or to which the Association has acquired an easement for the common use and enjoyment of Owners or Owners and others, as the case may be. The title to the property described in Exhibit "B" attached hereto and by reference incorporated herein shall be conveyed by Declarant to the Association, as Common Property, on or before the date the Declarant ceases to be a Class B Member of the Association, as hereinafter set forth.

Section 6. "Declarant" shall mean and refer to WILBAR DEVELOPERS, LLC, a Georgia limited liability company, and any successor, transferee or assignee of Declarant with respect to Declarant's rights hereunder.

Section 7. "Dwelling Unit" shall mean and refer to any permanent, permitted improvement or structure intended for use as a single family residence which is built upon a Lot, and for which a certificate of occupancy has been issued. Thus, a Lot shall become a Dwelling Unit (and a Dwelling Unit therefore includes a Lot) at the point in time that the construction of a permitted structure thereon for residential purposes is completed on said Lot and a certificate of occupancy issued therefor.

Section 8. "Lot" shall mean and refer to any plot of land (with the exception of the Common Area) shown upon a "Plat," as that term is hereinafter defined, and any subsequent amendment thereto or replacement thereof, and upon which a permanent, permitted improvement or structure intended for use as a single family residence has not been completed and a certificate of occupancy has not been issued therefor.

Section 9. "Owner" shall mean and refer to the record title owner, whether one or more persons or entities, of a fee simple title to any Lot or Dwelling Unit, but excluding those persons or entities having an interest therein merely as security for the performance of an obligation.

Section 10. "Plat" shall mean and refer to the subdivision plat of the Property, which shall be recorded in the Fulton County, Georgia public records on the day this Declaration is recorded, and any additions and amendments thereto so recorded in the public records of Fulton County, Georgia.

Section 11. "Property" shall mean and refer to that certain real property which is described in Exhibit "A", submitted to the terms and conditions of this Declaration.

ARTICLE II

PROPERTY RIGHTS

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

(a) Declarant's reservation of a non-exclusive easement in and to the Common Area for so long as one (1) Lot remains unsold by Declarant, for (I) the construction, installation, maintenance, repair and reinstallation of utilities, including, but not limited to, storm and sanitary sewers, electric, gas, cable television, telephone and water facilities, to serve the Property, the Lots and Dwelling Units and (II) the marketing of Lots and Dwelling Units;

(b) the right of the Association to charge reasonable user and other fees for the use of any facility or improvement situated upon the Common Area;

(c) the right of the Association to suspend the voting rights and right to use of the Common Area by an Owner for (i) any period during which any assessment against his or her Lot or Dwelling Unit remains unpaid; and (ii) a period not to exceed sixty (60) days for any infraction of the Association's published rules and regulations, the By-laws or this Declaration; provided, however, that such suspension of right of use of Common Area does not impose any serious health or other hazard to the Owner in default or to other Owners on the Property;

(d) the right of the Association to perform its rights and responsibilities hereunder or under the By-laws;

Unit shall be exercised as those persons determine, but in no event shall more than one vote be cast with respect to any such Lot or Dwelling Unit. When title to a Lot or Dwelling Unit is held by a corporate entity, one person shall be designated to cast the vote for such entity by virtue of a duly executed corporate resolution, submitted to and kept on file with the Board of Directors.

Class B Member. The Class B member shall be Declarant, and Declarant shall be entitled to three (3) votes for each Lot or Dwelling Unit owned by Declarant. The Class B membership shall cease, and shall be converted to Class A membership, on the earliest occurrence of any of the following events:

- (a) when eighty percent (80%) of the total votes of the Association are held by Owners other than Declarant, or less if set forth in a written declaration by Declarant and recorded in the real estate records of Fulton County, Georgia; provided, however, if Owners, other than Declarant, hold less than sixty percent (60%) of the total votes of the Association, Declarant shall not make said written declaration unless such is approved by The Bank of North Georgia ("BNG") if, and only if, the lien of BNG's security deed covering the Property is not satisfied and released at such time;
- (b) when Declarant, in its sole discretion, terminates the Class B membership by a written instrument recorded in the public records of Fulton County, Georgia; provided, however, if Owners other than Declarant hold less than sixty percent (60%) of the total votes of the Association, Declarant shall not make such written instrument unless such is approved by BNG if, and

only if, the lien of BNG's security deed covering the Property is not satisfied and released at such time;

(c) on December 31, 2009.

ARTICLE IV

COVENANT FOR MAINTENANCE; ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot or Dwelling Unit owned by a Class A Member of the Association, hereby covenants, and each Owner of any Lot or Dwelling Unit by acceptance of a deed therefor and by becoming a Class A Member of the Association, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments, such assessments to be established and collected as hereinafter provided, for the Association. Declarant, so long as Declarant is the Class B Member of the Association, shall not have the obligation to pay either annual or special assessments. Declarant shall, at its option, to be exercised on an annual basis, either pay assessments with respect to Lots or Dwelling Units owned by Declarant as if Declarant was a Class A Member of the Association or pay any deficit of the Association for such calendar year. In no event and under no circumstances shall Declarant have the responsibility or obligation to pay both assessments and deficits as aforesaid. The annual and special assessments, together with interest, costs, and reasonable attorney's fees for collection thereof, shall be a charge on each Lot or Dwelling Unit owned by a Class A Member of the Association and shall be a continuing lien upon each such Lot or Dwelling Unit against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees for collection thereof, shall also be the personal obligation of

assessment as levied herein. Declarant hereby reserves for itself, its designees, transferees and assigns, and for the Board of Directors of the Association, an easement upon any portion of the Property to maintain the Common Area as herein described.

Section 5. Annual Assessment Increases. (a) The Board of Directors shall establish the first annual assessment for the Association. Such annual assessment shall be an amount as the Board of Directors deems necessary and proper for the purposes of the Association.

(b) From and after January 1 of the calendar year immediately following the meeting of the Board of Directors at which it establishes the first assessment, the maximum annual assessment will be determined each year as the Board of Directors in its reasonable discretion and judgment may decide and such assessment shall be deemed automatically approved unless it is rejected at the annual meeting by fifty-one percent (51%) of the votes held by all members of the Corporation (if the membership disapproves the proposed budget for any reason, then the budget for the preceding year shall continue in effect with the Board of Directors having the right to increase assessments for expenditures which it deems necessary) a vote of the membership, so long as the increase in the annual assessment is not greater, on a percentage basis, than the cumulative increase in the United States Bureau of Labor Statistics, Revised Consumer Price Index for All Urban Consumers, All Items, for the Atlanta, Georgia SMSA, (1984 = 100) (the "C.P.I."), issued by the Bureau of Labor Statistics of the United States Department of Labor, from the calendar month in which assessments commenced. (That the maximum annual assessment may be increased on a cumulative basis shall mean that for any particular year the maximum annual assessment may be increased by an amount equal to (1) the maximum annual increase permissible (the permissible increase for any preceding calendar year(s)

shall be calculated as if such preceding calendar year(s) had been increased by the maximum annual increase for all preceding calendar year(s) for all preceding calendar year(s) minus (2) the actual increase for any preceding calendar year(s), plus (3) the maximum annual increase permissible for such particular calendar year.) (If such index is no longer published, an index as comparable as possible shall be used to make the determination contemplated herein). If the percentage increase in the annual assessment exceeds the percentage increase in the C.P.I. as aforesaid, then such percentage increase in excess of said C.P.I. shall require the assent of the majority of the votes of each class of members of the Association who are voting in person or by proxy, at a meeting duly called for this purpose.

Section 6. Special Assessments. In addition to the annual assessments authorized above, the Board of Directors may levy, at any time, a special assessment, provided that any such special assessment shall have the assent of a majority of the votes of each class of members of the Association who are voting in person or by proxy at a meeting duly called for this purpose.

Section 7. Notice and Quorum for Any Action Authorized Under Section 5. Written notice of any meeting called for the purpose of taking any action authorized under Section 5 of this Article IV shall be sent to all members not less than thirty (30) days nor more than forty-five (45) days in advance of the meeting. A quorum for meetings shall be set forth in the By-laws.

Section 8. Notice and Quorum for Any Action Authorized Under Section 6. Written notice of any meeting called for the purpose of levying a special assessment shall be sent to all members not less than ten (10) and not more than thirty (30) days in advance of such meeting. A quorum for such meeting shall be as set forth in the By-laws.

judgment against said Owner and to foreclose the lien of such judgment against the Lot or Dwelling Unit, as the case may be, or to bring any other action at law or in equity to enforce its rights against such Owner or to foreclose the lien for assessment provided to the Association hereunder. No applicable Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment or non-use of his Lot or Dwelling Unit.

Section 14. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first priority deed to secure debt to which the Lot or Dwelling Unit in question is subject. The sale or transfer of any Lot or Dwelling Unit shall not affect nor in any way lessen or limit the assessment lien or any amounts of such assessment lien due and owing; provided, however, the sale or transfer of any Lot or Dwelling Unit pursuant to the power of sale contained in such deed to secure debt; by a deed conveyed in lieu of foreclosure, or by virtue of any other proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer, but shall not affect the lien of assessment subsequent to such conveyance. No other sale, transfer or other method of conveyance, however, shall relieve such Lot or Dwelling Unit or Owner from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V

INSURANCE AND CASUALTY LOSSES

Section 1. Casualty Insurance. The Association shall keep all of the improvements on the Common Area insured as provided in the By-laws, with an insurance company of sound business stature licensed to do business in the State of Georgia, by virtue of a policy of fire and casualty

insurance with extended coverage. The cost of such insurance shall be a part of and shall be due and payable with the monthly assessment described herein.

All proceeds from such policy for any casualty loss, to the extent required, shall be used by the Association to repair and restore any improvements on any Common Area damaged by such a casualty. Should any of the insurance proceeds remain after the Association makes such repairs to such improvements, then such remaining proceeds shall be retained by the Association in the common fund of the Association, and each Owner's share of assessments for the year following the retention of such excess funds shall be reduced on a pro-rata basis, based upon each such Owner's share of the responsibility for such assessments.

Section 2. Condemnation of Common Area. Should a portion of, but not all of, the Common Area be taken by condemnation or eminent domain or be conveyed by the Association to any governmental authority in lieu thereof, the proceeds therefrom shall be used to restore the remaining improvements on the Common Area. However, should such action to restore and repair any such Common Area be deemed impractical by the Association, then said proceeds shall be paid over to and used by the Association to repair the damage caused by such taking in a manner to insure and protect the value and viability of the remaining portion of the Common Area not so taken, with the balance of said proceeds being paid to the Association for its retention and use.

Section 3. Insurance on Common Area. The Association or its duly authorized agent shall have the authority to and shall obtain insurance for the Common Area and all insurable improvements constructed on said Common Area, which insurance shall insure against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief insurance, in an amount deemed by the Board of Directors sufficient to cover the full replacement

Committee. Said mailboxes shall be maintained, repaired and replaced from time to time as needed at the cost and expense of the Owner of the applicable Lot or Dwelling Unit. Any mailbox installed as a replacement shall be of the same type, quality and character as initially furnished.

Section 9. Swimming Pools and Tennis Courts. Neither permanent nor portable swimming pools or tennis courts shall be constructed or maintained on any portion of the Property, except by Declarant upon the Common Area, unless first approved by the Architectural Committee.

Section 10. Assembly of Mechanical Devices. 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 unkept conditions, shall not be pursued or undertaken in either the front yard or side yard of any Lot or Dwelling Unit or the Common Area, or in any driveway, garage, carport or other place where such condition is visible from any street.

Section 11. Storage of Building Materials. No Owner shall store any lumber, brick, stone, concrete or any other building material, mechanical device or any other thing used for building purposes on any Lot or Dwelling Unit except for purposes of construction on such Lot or Dwelling Unit, and no Owner shall store any such materials upon the Common Area.

Section 12. Housing of Animals. (1) No stable, poultry house or yard, rabbit hutch or other similar yard or structure shall be constructed or allowed to remain on any Lot or Dwelling Unit or the Common Area; (2) no animal or bird except of a kind which is customarily kept as a domestic pet shall be kept in any house or on any Lot or Dwelling Unit; (3) no more than two (2) domestic pets may be kept in any Dwelling Unit or on any Lot.

the time and day any such costs are incurred. If an emergency condition in violation of this Article VII of this Declaration shall exist on any Lot or Dwelling Unit such that the Board of Directors deems it unwise or unsafe to provide fourteen (14) days written notice prior to curing such condition, the Board of Directors may cause entry upon the exterior of the Dwelling Unit or Lot for the purposes stated in this Section immediately after making reasonable efforts to notify the Owner of such Lot or Dwelling Unit.

ARTICLE VIII

EASEMENTS

Section 1. Utility Easements. Each Lot, Dwelling Unit and the Common Area shall be subject to existing easements for public utilities' purposes (including, but not limited to, fire and police protection, garbage and trash removal, water and sewage system, electric, telephone, and gas service), and the utilities and applicable governmental agencies having jurisdiction thereover and their employees and agents shall have the right of access to any Lot, Dwelling Unit, the Common Area in furtherance of such easements.

Section 2. Additional Easements; Easement for Enforcement of Rights. Declarant reserves the right, for itself and its designees, transferees and assignees (so long as Declarant or said designee, transferee or assignee owns a Lot for the purposes of development and/or sale) and for the Board of Directors of the Association, an easement upon any portion of the Property for the purpose of enforcing its rights herein, and to grant such additional easements, including, but not limited to, irrigation, drainage, drainage retention, wells and pump, electric, gas, water, telephone or other utility easements, or any cable television easement, or to relocate any existing utility or other easements in any portion of the Property as Declarant, its designee, transferee or

assignee or the said Board of Directors shall deem necessary or desirable for the proper operation and maintenance of the Property, or any portion thereof, or for the general health and welfare of the Owners; provided, however, that such additional utilities or other services or the relocation of existing utilities or other easements will not prevent or unreasonably interfere with the use of affected Lots or Dwelling Units for permitted purposes.

ARTICLE IX

GENERAL PROVISIONS

Section 1. Enforcement. The Association through the Board of Directors shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association to enforce any covenant, condition, reservation lien, charge or restriction herein contained shall in no event be deemed a consent or approval of such action, or a waiver of the right to do so thereafter to the full extent permitted hereunder.

Section 2. Severability. Invalidation of any one of the clauses, covenants or restrictions as contained herein by judgment, decree, court order or any statute or other ordinance duly passed by an entity with jurisdiction over the Property shall not affect any other clauses, covenants, or restrictions contained herein, all of which shall remain in full force and effect, without modification. In any invalidation of any such clause, covenant or restriction, then that clause, covenant or restriction shall be deemed to have been rewritten in such a way as to carry out fully the intent of that clause, covenant or restriction (where discernible), but be within full compliance with the judgment, decree, court order, statute or other ordinance.

Section 3. Amendment and Duration. The covenants and restrictions of this Declaration shall run with and bind the Property for a term of twenty (20) years from the date this Declaration is recorded in the public records of Fulton County, Georgia, after which time it shall automatically be extended for successive periods of ten (10) years each, unless ninety percent (90%) of the votes allocated to Owners of Dwelling Units are cast in favor of a termination of this Declaration, at a duly called meeting for such a purpose. This Declaration may be amended during the first twenty (20) year period by an instrument signed by Owners holding at least sixty percent (60%) of the votes of members of the Association present, either in person or by proxy, at a duly called meeting of the Association, and thereafter by an instrument signed by Owners holding at least seventy-five percent (75%) of the votes of the Association; provided however, that so long as the Class B membership exists any such amendment shall require the written assent of Declarant. Any amendment to this Declaration shall not be effective until it is recorded in the records of the Clerk of the Superior Court, Fulton County, Georgia.

Section 4. Captions. The captions inserted at the beginning of each Section hereof are for convenience of reference only and shall not be deemed to affect the meaning or interpretation of the terms and provisions of this instrument.

IN WITNESS WHEREOF, the undersigned Declarant has hereunto set its hand and seal, on the day and year first above written.

Signed, sealed and delivered in the presence of:


WILBAR DEVELOPERS, LLC



By:  (SEAL)

Witness

Its: Member



Attest: _____ (SEAL)

Notary Public

Its: _____

