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P.O. BOX 3280  
GAINESVILLE, GA 30503

**DECLARATION OF PROTECTIVE COVENANTS**

**FOR TANNERS CREEK**

**WITNESSETH:** That,

THIS DECLARATION OF PROTECTIVE COVENANTS FOR TANNERS CREEK (TANNERS CREEK), made as of the 15<sup>th</sup> day of October, 2001, by Tanners Creek Development LLC (TCD), a Georgia Limited Liability Company, authorized to do business in Georgia, (herein referred to as "Grantor");

WHEREAS, Grantor is the owner of certain real property located within Land Lots # 68 & 69 of the Eighth Land District, Hall County, Georgia, as more particularly described on Exhibit "A", attached hereto and by this reference made a part hereof (hereinafter referred to as TANNERS CREEK); and

WHEREAS, Grantor desires to subject TANNERS CREEK to the covenants herein made to provide for the development of TANNERS CREEK in an orderly manner with appropriate architectural, landscaping and maintenance controls to maintain the value, aesthetic appearance, and architectural harmony of TANNERS CREEK during and after development;

NOW, THEREFORE, Grantor hereby declares and consents that TANNERS CREEK is and shall be owned, held, transferred, sold, conveyed, leased, subleased, used, occupied, and mortgaged or otherwise encumbered subject to the Protective Covenants, conditions, easements, and reservations hereinafter set forth in this Declaration and every grantee of any interest in TANNERS CREEK, by acceptance of a deed or other conveyance, whether or not such deed or other conveyance shall be signed by such grantee and whether or not such grantee shall otherwise consent in writing, shall take subject to this Declaration and be deemed to have assented and agreed to the same.

**ARTICLE 1 - DEFINITIONS**

**1.1 Certain Defined Terms.** As used herein, the following terms shall have the following meanings (such meanings to be applicable to both the singular and plural forms of the terms defined):

1.1.1 "Appointing Authority" shall mean the Person that from time to time possesses the power, pursuant to Article 3 hereof, to appoint the members of the DCC.

1.1.2 "**Approve**", "**Approved**" or "**Approval**" shall mean an express prior approval in a written statement signed by the approving Person.

1.1.3 "**Assessment Land**" shall mean (i) any and all Building Sites and (ii) all other portions of TANNERS CREEK owned by Grantor (or any Person or Persons comprising Grantor).

1.1.4 "**Assessments**" shall mean, collectively, (i) an Owner's or Grantor's prorata share of common expenses as set forth in Section 7.5 hereof, and (ii) all other costs and expenses payable by an Owner or Grantor pursuant to the terms hereof.

1.1.5 "**Board of Directors**" or "**Board**" shall mean the Board of Directors of the Owner's Association, which is the governing body of the Owners Association.

1.1.6 "**Building**" shall mean and include, but not be limited to, both the main portion of a structure built for permanent use and all projections or extensions thereof, including, but not limited to, garages, outside platforms and docks, carports, canopies, enclosed malls, and porches.

1.1.7 "**Building Site**" shall mean any parcel of land that is part of TANNERS CREEK and designated a "Building Site" by the DCC pursuant to Section 4.1 hereof, the size, dimensions and boundaries of which shall have been designated by the DCC. No land owned by Grantor may be designated a "Building Site" until the proposed final plans for development of such land have been approved by the DCC. If fee simple title to two (2) or more adjacent Building Sites is acquired by the same Owner, such commonly owned adjacent Building Sites may, at the option of such Owner and with the Approval of the DCC, be combined and treated as a single Building Site for purposes of this Declaration, provided that the location of the Improvements on such combined adjacent Building Sites shall have been approved by the DCC. Subject to paragraph 5.1.2 hereof, if any portion of TANNERS CREEK should be submitted to the Georgia Condominium Act, as amended, then the entirety of such property so submitted shall be the "Building Site" for purposes of this Declaration.

1.1.8 "**Business Day**" shall mean any day, excluding Saturdays, Sundays and legal holidays in Georgia.

1.1.9 "**CERCLA**" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as same may subsequently be amended from time to time, or any corresponding provisions of succeeding law.

1.1.10 "**Common Area Costs**" shall mean the common expenses incurred by the Owners Association with respect to the Common Areas, including, but not limited to, the expenses of maintenance, landscaping, operation, and repair of the Common Areas and Common Facilities, including, without limitation, (a) costs of overhead, labor, equipment, utilities, insurance and materials incurred in connection therewith, and (b) ad valorem real and personal property taxes assessed against the Common Areas and Common Facilities owned by the Owners Association (the payment of ad valorem taxes on any portions of the Common Areas and Common Facilities not owned by the Owners Association shall be the obligation of the respective Owners of the Building Sites, and, in the case of Assessment Land, the Grantor, on which such Common Areas or Common Facilities are located).

1.1.11 "**Common Area Plan**" shall mean the document or documents describing the existing Common Areas, if any, within the Assessment Land at TANNERS CREEK, which document or documents shall have been adopted by the DCC. The DCC may amend the Common Area Plan, at any time and from time to time, by adding property to, or removing property from, the Common Areas; *provided, however*, without the

Approval of the Owner thereof no portion of a Building Site may be designated as part of the Common Areas.

1.1.12 "**Common Areas**" shall mean and include any parcels of land that are a part of the Assessment Land at TANNERS CREEK and, from time to time, designated on any present or future Common Area Plan as "Common Areas", including, but not limited to, road rights of way, utility or drainage easement areas, project entrances, stream channels, lakes, ponds, and any other property intended to be devoted (either temporarily or permanently) to the common use or enjoyment of the Owners and Occupants of TANNERS CREEK, as designated by the DCC. "Common Areas" may also include portions of a Building Site, which the DCC, with the consent of the Owner thereof, has determined should be landscaped and maintained by the Owners Association. Title to "Common Areas" may be vested in a Governmental Authority, a utility provider, Grantor, a Declarant, the Owners Association or an Owner.

1.1.13 "**Common Facilities**" shall mean and include any and all Improvements intended for the common use and enjoyment of the Owners and Occupants and located on Common Areas, such as sidewalks and other pedestrian facilities, signage, landscaping and utility and drainage lines and pipes.

1.1.14 "**DCC**" shall mean the "**Tanners Creek Design Control Committee**" created and established pursuant to Article 3 hereof.

1.1.15 "**Declarant**" shall mean Grantor and any other Person or Persons hereafter designated as a Declarant by Grantor in a written instrument, executed and recorded with the Clerk of the Superior Court of Hall County, Georgia.

1.1.16 "**Declaration**" shall mean this Declaration of Protective Covenants for TANNERS CREEK, including the Exhibits attached hereto, as further amended and in effect from time to time.

1.1.17 "**Fiscal Year**" shall mean the fiscal year of the Owners Association which, unless and until otherwise approved by the Board of Directors of the Owners Association, shall be the calendar year.

1.1.18 "**Foreclosure**" shall mean, without limitation, (i) the judicial foreclosure of a Mortgage, (ii) the exercise of a power of sale contained in any Mortgage, (iii) conveyance of the property encumbered by a Mortgage in lieu of foreclosure thereof, or (iv) any action commenced or taken by a lessor to regain possession or control of property leased to a lessee in a transaction commonly known as a "sale/leaseback."

1.1.19 "**Governmental Authority**" shall mean the United States of America, the State of Georgia, Hall County, Georgia, the City of Flowery Branch, Georgia and any agency, authority, court, department, commission, board, bureau or instrumentality of any of them.

1.1.20 "**Grantor**" shall mean TCD and any other Person or Persons (a) that succeed to ownership of all or substantially all of that portion of TANNERS CREEK owned by TCD at the time of succession and (b) that at the time of such succession are designated in writing by all of the Persons that previously constituted the Grantor to be the Grantor or a part thereof.

1.1.21 "**Hazardous Substance**" shall mean any substance identified in Section 101(14) of CERCLA or petroleum (including crude oil or any fraction thereof).

1.1.22 "**Improvement**" shall mean and include every structure and appurtenances thereto of every kind and type and any other physical change upon, over, across, above or under TANNERS CREEK or any part

thereof. "Improvement" shall include, but not be limited to, the following facilities or activities, whether of a permanent or temporary nature: all Buildings, out buildings, streets, roads, access roads, driveways, sidewalks, walkways, pedestrian malls, bike paths, running or jogging paths, ways or trails, traffic control devices and signs, parking structures and garages, parking lots and other parking areas, loading areas, signs, canopies, awnings, trellises, fences, lawns, landscaping (including, without limitation, landscaping of balconies, plazas and other portions of Buildings), plazas, patios, recreational facilities such as tennis courts and swimming pools, shelters, security and safety devices, bridges, construction trailers and other temporary construction outbuildings, screening walls, retaining walls, stairs, decks, benches and other exterior furniture, hedges, windbreaks, plantings, planted trees and shrubs, poles, exterior air conditioning, heating or air-handling equipment, water softener fixtures or equipment, aerials, antennas, lighting fixtures, drainage structures, communications equipment, including, without limitation, microwave dishes and relay equipment, coaxial and fiber optic cables, satellite transmitting and/or receiving ground stations, poles, pumps, wells, tanks, reservoirs, pipes, lines meters, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities, and the color, texture, or material or other change to any Improvement.

1.1.23 "**Tanners Creek**" shall mean all that real property described on Exhibit "A", attached hereto and by this reference incorporated herein and made a part hereof, together with any real property hereafter made subject to this Declaration pursuant to Article 8 hereof, but less and except therefrom any and all real property hereafter withdrawn from this Declaration pursuant to Article 9 hereof.

1.1.24 "**Land Use Plan**" shall mean the document or documents that may include, without limitation, a drawing, showing the existing and future permitted Property Uses within TANNERS CREEK, which shall have been adopted by the DCC as the governing land use plan for TANNERS CREEK pursuant to Article 4 hereof. The Land Use Plan may be amended at any time and from time to time by the DCC. No document shall be, become or constitute part of the Land Use Plan until its adoption, as such, by the DCC.

1.1.25 "**Maintenance and Operational Activity**" shall mean any activity or function that takes place on an ongoing basis or Improvement during construction or installation of the Improvement or after such construction or installation has been completed or substantially completed, for the purpose of enabling or facilitating any Property Use to take place.

1.1.26 "**Mortgage**" shall mean a mortgage, deed to secure debt, deed of trust, or other similar security instrument now or hereafter duly recorded in the real property records of Hall County, Georgia, conveying a lien upon or security title to TANNERS CREEK, any part thereof or any interest or estate therein, or any Improvements thereon, or any lease of TANNERS CREEK, any part thereof or any interest or estate therein, or any Improvements thereon, in a transaction commonly known as a "sale/leaseback".

1.1.27 "**Mortgagee**" shall mean the holder of a Mortgage.

1.1.28 "**Occupant**" shall mean any Person holding a leasehold interest or usufruct in, or any other right to use or possess any of the real property subject to this Declaration.

1.1.29 "**Owner**" shall mean any Person or Persons, including, without limitation, Grantor, or any Person or Persons comprising Grantor, who own or hold an aggregate fee simple interest in an entire Building Site, as shown by the public real estate records of Hall County, Georgia, subject to the following special rules:

1.1.29.1 Any Person having an interest in such real property solely as security under a Mortgage shall not be deemed an Owner, unless such Person shall have excluded the mortgagor from possession

thereof by appropriate legal proceedings following a default under such Mortgage or has acquired fee simple title to such property by Foreclosure;

1.1.29.2 Occupants and other individual tenants or lessees of any portion of such real property shall not be deemed an Owner thereof, unless otherwise agreed by the fee simple or remainder title holder thereof and approved in writing by Grantor;

1.1.29.3 Any Person holding or owning any easements, rights-of-way or licenses that pertain to or affect any such real property shall not be deemed an Owner;

1.1.29.4 If any portion of TANNERS CREEK should be submitted to the Georgia Condominium Act, as amended, then for purposes of effecting ways and means of smooth and efficient communication between Grantor and such unit owners, Grantor shall be entitled to communicate and deal with the condominium association of such unit owners in all matters affecting the unit owners and such condominium association shall be deemed the Owner of the Building Site for purpose of this Declaration.

1.1.30 "**Owners Association**" or "**Association**" shall mean the Georgia nonprofit corporation to be organized, by Grantor pursuant to Article 7 hereof and its successors, if any.

1.1.31 "**Person**" shall mean any corporation, partnership, co-tenancy, joint venture, individual, business trust, real estate investment trust, trust, banking association, federal or state savings and loan institution, or any other legal entity, whether or not a party hereto.

1.1.32 "**Prime Rate**" shall mean the prime rate of interest in effect announced by the Wall Street Journal from time to time.

1.1.33 "**Project Area**" shall mean all land within TANNERS CREEK, excluding only the Assessment Land.

1.1.34 "**Project Area Costs**" shall mean the common expenses incurred by the Owners Association with respect to the Project Area, including, without limitation, the costs of landscaping and maintaining the certain public rights of way, if any roads pass through TANNERS CREEK, including the costs of overhead, labor, equipment, utilities, insurance and materials incurred in connection therewith.

1.1.35 "**Property**" shall mean the real property herein referred to as TANNERS CREEK, together with any additional real property which may be made subject to this Declaration in accordance with Article 8 hereof, but less and except therefrom any and all real property hereafter withdrawn from this Declaration pursuant to Article 9 hereof.

1.1.36 "**Property Use**" shall mean the intended functions of, or activities that take place on a temporary or ongoing basis on, in or with respect to any parcel or element of real property that is part of TANNERS CREEK. In its Approval of a Property Use, the DCC shall be deemed to have Approved (unless its Approval shall have expressly excluded or limited the same) any other Property Use reasonably related, ancillary or accessory to the Property Use so Approved. For example, and not by way of limitation, a hotel Property Use would include such things as swimming pools, tennis courts and similar recreational facilities and also establishments for the sale of convenience goods and eating and drinking establishments, provided that such establishments were designed and scaled in size to meet only the requirements of the Occupants of the particular Building Site and their guests.

1.1.37 "**Public Service Site**" shall mean a Building Site where the DCC has restricted the Property Use to a religious, educational, charitable or other public service use.

1.1.38 "**Real property or any interest therein**" shall mean and include, without limitation, (i) a tract of land in which Grantor, or any Person or Persons comprising part of Grantor; owns fee simple title, (ii) a tract of land in which Grantor, or any Person or Persons comprising part of Grantor owns any interest as a co-tenant; (iii) an easement or right-of-way owned by Grantor, or any Person or Persons comprising part of Grantor, (iv) a leasehold interest or usufruct owned by Grantor, any Person or Persons comprising part of Grantor, (v) air, subterranean, mineral or water rights owned by Grantor, or any Person or Persons comprising part of Grantor, above, below or appurtenant to land not owned by Grantor, or any Person or Persons comprising part of Grantor, and (vi) real property interests owned by a Person or Persons other than Grantor, or any Person or Persons comprising part of Grantor, but in which Grantor, or any Person or Persons comprising part of Grantor, has an economic interest, direct or indirect, such as a partnership or joint venture in which Grantor, or any Person or Persons comprising part of Grantor, or, for example, a subsidiary corporation of Grantor, or any Person or Persons comprising part of the Grantor, is a partner or joint venturer.

1.1.39 "**Release**" shall have the meaning given to such term in Section 101(22) of CERCLA.

1.1.40 "**Requirement of a Governmental Authority**" shall mean any law, ordinance, order, requirement, rule, writ or regulation of a Governmental Authority, including, without limitation, the Zoning Conditions.

1.1.41 "**TCD**" shall mean Tanners Creek Development, L.L.C., a Georgia Limited Liability Company, and its successors and assigns, if any.

1.1.42 "**Utility Easement Area**" means a strip of property ten (10) feet in width running inside and along all of the boundary lines of each Building Site.

1.1.43 "**Utility Provider Site**" shall mean a Building Site the Property Use of which has been restricted by the DCC to use by a utility provider, such as an electrical substation or telephone exchange building.

1.1.44 "**Zoning Conditions**" shall mean the zoning and related conditions applicable to TANNERS CREEK, or any part thereof, on the date hereof, including, without limitation, the Zoning Ordinances of Hall County, Georgia or Flowery Branch, Georgia, and all regulations promulgated thereunder, together with all modifications, amendments, variances, special uses or special exceptions thereto hereafter made or granted by a Governmental Authority.

1.2 **Other Terms.** All terms used in this Declaration, which are not defined in this Article 1 shall have the meanings set forth elsewhere in this Declaration.

## ARTICLE 2 -PURPOSE OF THIS DECLARATION

2.1 **Purpose.** The purpose of this Declaration of Protective Covenants is to ensure the proper use and appropriate development and improvement of all Real Property that constitutes TANNERS CREEK so as to provide a harmonious development that will promote the general welfare of the Owners and Occupants thereof and will protect the present and future value of TANNERS CREEK and all parts thereof; to ensure the orderly and attractive development and use of TANNERS CREEK; to prevent the erection in or on TANNERS CREEK

of any Improvements built of improper or unsuitable design and/or materials; to prevent any haphazard and inharmonious improvement of Building Sites; to protect Owners against such improper use of surrounding Building Sites as will depreciate the value of their Building Sites; to encourage the erection of attractive Improvements; to provide for the orderly and effective maintenance of TANNERS CREEK; to provide for the construction, installation and maintenance of Common Facilities; and in general to preserve the architectural integrity, aesthetic appearance, and economic value of TANNERS CREEK and Improvements constructed thereon from time to time.

**2.2 Run With the Land.** This Declaration and all of the provisions hereof are and shall be real Covenants running with TANNERS CREEK and shall burden and bind TANNERS CREEK for the duration hereof. To that end, this Declaration shall be deemed incorporated in all deeds and conveyances hereinafter made by Grantor and/or any Owner. Every Person, including a Mortgagee, acquiring or holding any interest or estate in any portion of TANNERS CREEK shall take or hold such interest or estate, or the security interest with respect thereto with notice of the terms and provisions of this Declaration; and in accepting such interest in, or a security interest with respect to, any portion of TANNERS CREEK, such Person shall be deemed to have assented to this Declaration and all of the terms and provisions hereof.

**ARTICLE 3 - THE COMMITTEE**

**3.1 Creation of the Committee.** There is hereby established the Tanners Creek Design Control Committee (the "DCC"), which shall consist of not less than three (3) regular members nor more than seven (7) regular members, one of whom may be an architect duly licensed under the laws of the State of Georgia. The actual number of regular members comprising the DCC at any given time shall be determined from time to time by the Appointing Authority.

**3.2 Appointment of Members.**

3.2.1 All members of the DCC and the Chairman of the DCC shall be appointed by the Appointing Authority.

3.2.2 As long as Grantor owns any Real Property or any interest therein that is part of TANNERS CREEK, Grantor shall be the Appointing Authority and shall appoint all members of the DCC and shall have the right to remove any and all members from the DCC at any time for any reason, with or without cause.

3.2.3 When Grantor no longer owns any Real Property or any interest therein that is part of TANNERS CREEK or sooner, if Grantor should so elect, then the Owners Association shall be the Appointing Authority and shall appoint all members of the DCC and shall have the right to remove any and all members from the DCC at any time and from time to time for any reason, with or without cause.

3.2.4 Each member of the DCC shall serve at the pleasure of the Appointing Authority and each such member may be removed at any time and from time to time, with or without cause, by the Appointing Authority.

3.2.5 The Appointing Authority shall have the responsibility and obligation of compensating the members of the DCC.

**3.3 Term of Members.** Each member of the DCC shall hold office from the date of appointment until such time as he or she has resigned, or has been removed or a successor has been appointed as provided herein, whichever occurs sooner.

**3.4 Chairman of the DCC.** The Appointing Authority shall designate one of the appointed regular members of the DCC to be Chairman of the DCC. The Person appointed Chairman shall serve in that capacity from the date of his or her appointment until such time as he or she has resigned as Chairman, has been removed or a successor has been appointed as provided herein, whichever occurs sooner. The Appointing Authority may remove a Person as Chairman of the DCC at any time and from time to time with or without cause and, in such event, shall appoint a replacement Chairman. The Appointing Authority also may appoint any regular member of the DCC as Acting Chairman to perform the duties of the Chairman in the absence of the Chairman.

### **3.5 DCC Staff**

3.5.1 The Appointing Authority may also appoint staff and/or consultants to the DCC, including, without limitation, architects, planners, engineers, attorneys, accountants and other Persons whose knowledge, expertise or skills will assist the DCC in carrying out its functions.

3.5.2 These staff members and consultants may be authorized by the DCC to attend its meetings and to participate in all discussions that may take place thereat, to advise the DCC in their respective areas of expertise and to perform all other tasks requested by the DCC to assist the DCC in carrying out its functions.

**3.6 Change in Grantor.** If, at any time, the Grantor changes, the power of appointment of the members of the DCC, the staff thereof and the consultants thereto automatically shall pass to any Person or Persons that become the new Grantor.

**3.7 Voting.** The affirmative vote or written consent of a majority of the DCC shall constitute the decision of the DCC on any matter before the DCC, except the adoption of or amendment to the Land Use Plan. Voting need not occur at a meeting of the DCC but may take place through polling of members in writing, over the telephone, by electronic mail, or by any other means of communication.

**3.8 Compensation of Members.** The members and the Chairman of the DCC shall be entitled to reasonable compensation for services rendered, together with reimbursement for expenses incurred by them in the performance of their duties hereunder. The amount of such compensation shall be determined by the Appointing Authority. The Assessments may be used to pay said compensation and expenses, and if said fees and Assessments are insufficient for such purposes, the Appointing Authority shall pay the balance of said compensation and expenses.

### **3.9 Power and Authority of the DCC.**

3.9.1 The DCC shall have the power and authority expressly conferred upon it by this Declaration and, in addition, shall have the power and authority to do anything, to take any act or to expend any sum of money which, in the opinion of the DCC will promote, directly or indirectly, the health, safety, welfare, common benefit and enjoyment of the Owners and Occupants of TANNERS CREEK.

3.9.2 All actions of the DCC shall be in accordance with or consistent with the purpose of this Declaration and the criteria set forth in or promulgated pursuant hereto, including, but not limited to, the Land Use Plan, which the DCC shall have the power and authority to implement and enforce with respect to all provisions thereof, including, without limitation, allowable Property Uses on a particular Building Site.



3.10 **Bylaws.** The DCC may (but shall not be obligated to) adopt bylaws governing the time, place and manner in which the business of the DCC will be conducted.

3.11 **No Disqualification of Members.** No member (including the Chairman) of the DCC and no staff member or consultant employed by the DCC shall be disqualified from taking part in any DCC action or discussion on account of such Person's having a financial interest in the matter under consideration.

3.12 **Limitation on Liability.** Neither Grantor, the DCC, any member thereof, any staff member thereof, any consultant thereto nor the Appointing Authority or any director, officer, agent, or employee thereof shall be liable to any Owner or Occupant or to any other Person for any loss, damage or injury, or claim thereof, arising out of or in any way connected with the performance or nonperformance of the DCC's or the Appointing Authority's duties under this Article 3 unless due to the willful misconduct, gross negligence or bad faith of Grantor, the DCC, any member thereof, any staff member thereof, any consultant thereto or the Appointing Authority its directors, officers, agents, or employees, as the case may be.

3.13 **Establishment of Additional Protective Covenants.**

3.13.1 Grantor shall have the right and power at any time and from time to time to create, declare and establish additional and/or supplemental protective or restrictive covenants in addition to and supplementing this Declaration (herein called "Additional Covenants") if Grantor, in its reasonable judgment, determines such establishment is advisable because of actual or potential differences in development in different parts of TANNERS CREEK, including, without limitation, differences arising from varying political jurisdictions, zoning requirements, geographical separations, ownership status or intended uses. In establishing Additional Covenants, Grantor shall also designate the geographical area that is part of TANNERS CREEK over which the Additional Covenants shall apply. In determining the geographical area over which any Additional Covenants will apply, Grantor shall consider the factors specified above for establishment of the Additional Covenants. Grantor shall establish such Additional Covenants by placing appropriate documents of record in Hall County, Georgia. Further, Grantor shall make a good faith effort to notify in writing each Owner whose real property is within the designated area, by mail and/or other means, of the establishment and designation.

3.13.2 Any Additional Covenants shall be consistent with this Declaration, but in the event of any conflict between this Declaration and any such Additional Covenants, the provisions which require more restrictive standards shall apply.

3.13.3 No Additional Covenants shall prohibit or require abatement of or change in any Property Uses or Improvements for which the DCC has granted Approval of the schematic design submittal, the Property Use plans or the design development submittal unless the prohibition or requirement of abatement or change results from a final, non-appealable determination by a Governmental Authority or other public or quasi-public person that use of the land subject thereto is necessary for a public or quasi-public purpose, such as pedestrian walkways, transit ways, streets, or utility or drainage lines, and that Person has completed negotiations or necessary legal action to obtain a right-of-way, easement or other interest in the affected property that will accommodate the public or quasi-public purpose.

**ARTICLE 4 - LAND USE PLAN AND COMMON AREA PLAN**

**4.1 Adoption and Implementation of Land Use Plan and Common Area Plan.**

4.1.1 The DCC shall have sole and exclusive authority (i) to adopt, amend, modify and enforce the Land Use Plan, subject to the provisions of Section 4.2.1 hereof, (ii) to adopt, amend and modify the , Common Area Plan, and (iii) to designate the Building Sites within TANNERS CREEK, including, without limitation, the designation of Public Service Sites and Utility Provider Sites, which shall all be reflected on the Land Use Plan which the DCC shall adopt and promulgate. The Land Use Plan shall govern the location, mix, type, intensity, quality and density of Property Uses in and on TANNERS CREEK. The Common Area Plan shall designate the Common Areas within the Assessment Land at TANNERS CREEK.

4.1.2 The Land Use Plan shall implement and shall be consistent with the statement of purpose set forth in Article 2 of this Declaration.

4.1.3 A copy of the Land Use Plan and the Common Area Plan shall be made available for review by interested Persons after reasonable notice at all reasonable times at a place located in, on or near to TANNERS CREEK. As of the date hereof, copies of the Land Use Plan and the Common Area Plan are available by mail or for review at the offices of TCD.

#### 4.2 Amendments to the Land Use Plan.

4.2.1 From time to time, at any time and in its sole discretion, the DCC may amend the Land Use Plan in any manner consistent with the statement of purpose set forth in Article 2 of this Declaration; *provided, however,* that the DCC shall not adopt or amend a Land Use Plan so as to prohibit or to require abatement of or change in any Property Uses or Improvements which the DCC has previously Approved, unless the prohibition or requirement of abatement or change results from a final, non-appealable determination by a Governmental Authority or other public or quasi-public person that use of the land subject thereto is necessary for a public or quasi-public purpose, such as pedestrian walkways, transit ways, streets or utility lines, and that Person has completed negotiations or necessary legal action to obtain a right-of-way, easement or other interest in the affected property that will accommodate the public or quasi-public purpose.

4.2.2 The adoption and promulgation of the Land Use Plan and any amendment of or change to the Land Use Plan shall require the affirmative vote of at least two-thirds (2/3) of the regular members of the DCC.

### ARTICLE 5 - CONTROL AND LAND USE

5.1 **Restrictions.** To further the purpose of this Declaration as set forth in Article 2 hereof, TANNERS CREEK shall be subject to the following restrictions:

#### 5.1.1 No Improvement.

5.1.1.1 No Improvement shall be made on any parcel of land that is part of TANNERS CREEK unless that parcel constitutes a Building Site designated or Approved by the DCC, provided that utility and infrastructure Improvements such as streets that are being made, constructed, erected, installed, altered, demolished or destroyed by Grantor, or any Person or Persons comprising Grantor, by a Governmental Authority or by a quasi-governmental entity or public utility, may occur on land that is part of TANNERS CREEK, such as right of way, that does not constitute a Building Site approved by the DCC, as long as the plans for such Improvements are Approved in advance by the DCC as set forth hereinafter

shall have been Approved by the DCC pursuant to the provisions of this Declaration; *provided, however*, that any Improvement, which (i) takes place completely within a Building, (ii) does not change the Property Use, (iii) does not change the exterior appearance or alter the structural integrity of such Building, (iv) is not visible from the outside of the Building, and (v) does not create a demand for extraordinary services or utilities, may be undertaken without the Approval of the DCC.

**5.1.2 No Subdivision.** No Building Site shall be split, divided or subdivided nor shall the sized, dimensions or boundaries of any Building Site be otherwise changed or altered without prior written Approval of the DCC.

**5.1.3 Use Restrictions.**

5.1.3.1 The DCC shall have the right to designate the Property Use for any Building Site. No Property Use shall be engaged in and no change shall be made unless and until all plans for such Property Use or such change in Property Use shall have been Approved by the DCC.

5.1.3.2 Each Building Site shall be used only for the Property Use designated by the DCC and permitted by the Land Use Plan, as the same may be amended from time to time.

5.1.3.3 To qualify for consideration for Approval by the DCC, any proposed Property Use shall be consistent with and authorized by any applicable Requirements of Governmental Authorities having jurisdiction, shall be consistent with and authorized by the Land Use Plan, or an Amended Land Use Plan, and shall contribute to the implementation of and be consistent with the statement of purpose set forth in Article 2 of this Declaration. The DCC shall determine, in its sole discretion, whether or not any proposed Property Use is a permitted use under this Declaration.

**5.1.4 Temporary Structures.** No temporary buildings or other temporary structure shall be permitted on any Building Site unless Approved by the DCC in accordance with a policy established by the DCC.

**5.1.5 Nuisances.** No noxious or offensive trades, services, or activities shall be conducted on any Building Site, nor shall anything be done thereon which may be or become an annoyance or nuisance to the Owners or Occupants by reason of unsightliness or excessive emission of fumes, odors, glare, vibration, gases, radiation, dust, liquid, gaseous or solid wastes, smoke, or noise.

**5.1.6 Maintenance.**

5.1.6.1 Each Owner of TANNERS CREEK shall be responsible for keeping its Building Site (whether or not improved), any land located between the boundary lines of the Building Site and the curb lines of any improved street adjacent to said boundary lines, together with any sidewalk located therein (herein referred to as "Adjacent Strips"), Buildings, and other Improvements in a safe, clean, neat, and orderly condition and shall prevent rubbish from accumulating on its Building Site or surrounding Adjacent Strips. To the extent the same is not part of the Common Areas or a Building Site, Grantor shall be responsible for keeping the Assessment Land owned by it, any land located between the boundary lines of the Assessment Land and the curb lines of any improved street adjacent to said boundary lines, together with any sidewalk located therein, in a safe, clean, neat, and orderly condition and shall prevent rubbish from accumulating on such Assessment Land. Landscaping of a Building Site and Adjacent Strip shall be maintained in a neat and orderly manner including replacement of landscaping when needed according to the DCC. Each Owner shall keep its Building Site, any Adjacent Strips and all Improvements in good working order and repair, including, but not limited to:

- (a) All rubbish, trash, and other waste shall be stored in clean and sanitary solid waste receptacles and shall be promptly removed from the Building Site prior to its accumulation.
- (b) All exterior lighting and mechanical facilities shall be kept in good working order.
- (c) All parking areas shall be striped and all parking areas, driveways and roads shall be kept in good repair and clean and clear of debris.
- (d) The exterior of any Improvements shall be kept in good repair, including replacements, if necessary, and the exterior of all Improvements shall be repainted or otherwise refinished as needed.
- (e) All lawn areas shall be timely mowed and edged at least once a week during the growing season of March through October and as needed to keep an even, well groomed appearance during the months of November through February. Lawn areas shall be watered and fertilized at such times and in such quantities as required to keep the grass alive and attractive and shall be kept free of weeds.
- (f) All trees, plants and ground cover shall be timely and properly trimmed (including the removal of dead wood) according to their plant culture and the landscaping plan approved by the DCC hereof and shall be watered and fertilized at such times and in such quantities as are required to keep them alive and attractive. Any dead tree, shrub, plant or ground cover shall be removed and replaced immediately. All landscape bed areas shall be kept free of weeds and cultivated periodically, as needed.

5.1.6.2 During any periods of construction or demolition of any Improvements on a Building Site, the Owner of such Building Site shall substantially comply with any standards or guidelines adopted by the DCC for construction site practices and maintenance. Furthermore, if in the course of any construction or demolition activity, including, but not limited to, activity to establish a utility hook-up to a Building Site, any existing utility lines, streets, curbs or other Improvements are damaged in any way, the Owner conducting such construction or demolition shall restore or repair such lines, streets, curbs or other Improvements to a condition at least as good as existed prior to the damage (to the extent practicable), and shall pay any reasonable costs or expenses, including reasonable attorneys' fees, actually incurred by any Person other than such Owner arising from or as a result of such damage.

5.1.6.3 Any work performed by Grantor or any Person or Persons comprising Grantor in accordance with subparagraph 5.1.1.1 hereof shall substantially comply with any standards or guidelines adopted by the DCC therefor. Furthermore, if in the course of any such work, any existing utility lines, streets, curbs or other Improvements are damaged in any way, Grantor shall restore or repair such lines, streets, curbs or other Improvements to a condition at least as good as existed prior to the damage (to the extent practicable), and shall pay any reasonable costs or expenses, including reasonable attorneys' fees, actually incurred by any Person other than Grantor arising from or as a result of such damage.

5.1.6.4 The DCC may determine that any Maintenance and Operational Activity either causes or results in a violation of or is inconsistent with the purpose and intent of this Declaration and thereafter require the Person or Persons so engaging in or permitting such activity to cease or to correct the activity and/or conditions that are in violation of or inconsistent herewith.

**5.1.7 Open Fires.** Open fires of any type within TANNERS CREEK are hereby expressly prohibited unless approved in writing by the DCC and by the applicable Governmental Authorities having jurisdiction.

**5.1.8 Changes in Zoning.** Without the Approval of the DCC, no Owner or Occupant shall file with any Governmental Authority having jurisdiction over the Property or any part thereof any application or petition for zoning, rezoning, special use permit, or zoning variance, any subdivision plan, plat or application, any request for annexation, or any similar filing affecting the use of the Property. The Owners shall develop and use their respective Building Sites in accordance with the Zoning Conditions and this Declaration.

**5.1.9 Hazardous Substances.**

5.1.9.1 No Owner or Occupant nor any lessee, licensee or other Person acting at the direction or with the consent of an Owner or Occupant shall manufacture, treat, use, store or dispose of any Hazardous Substance on, in, above or under TANNERS CREEK, or any part thereof, except substantially in accordance with all applicable Requirements of Governmental Authorities having jurisdiction.

5.1.9.2 No Owner or Occupant, lessee, licensee or other Person acting at the direction or with the consent of an Owner or Occupant shall knowingly permit the Release of a Hazardous Substance on, from, in, above or under TANNERS CREEK or any part thereof so as to create an imminent and substantial endangerment to health, welfare or the environment.

**5.1.10 Use of Trade Name.** Each Owner acknowledges that TCD claims as its sole and exclusive property the trademark, service mark and/or trade name "TANNERS CREEK" (herein referred to as the "Mark"). No Owner or Occupant shall claim a superior right to said Mark and no Owner or Occupant shall use the Mark in any manner whatsoever in conjunction with such Owner's or Occupant's Building Site or the operations conducted thereon unless it has obtained the prior written permission from Tanners Creek or unless it is incorporated into the name of the road or street on which such Owner's Building Site is located in which latter case an Owner may use the road or street name in the Building's address.

**5.2 Complaints.** Each Owner and Occupant shall be entitled to file complaints with the DCC alleging a violation of this Article 5. The DCC shall designate one (1) of its regular members or an agent to investigate any complaints so filed. If such member or agent shall conclude that a breach or violation has occurred, the alleged violator shall be notified in writing of the complaint; and, upon receipt of the written notice of the complaint, the alleged violator shall have ten (10) Business Days within which to begin in good faith to cure the violation or within which to file an appeal before the DCC. If the alleged violator does not begin in good faith to cure the violation or file an appeal within the ten (10) Business Days provided, the DCC may cause the violation to be cured at the expense of the Owner or Occupant deemed to be in violation in accordance with the provisions of Article 11 hereof. If the alleged violator appeals to the DCC, the DCC shall hear the appeal within seven (7) business days. If the DCC confirms the findings of the individual member or agent, the DCC may cause the violation to be cured at the expense of the Owner or Occupant in violation in accordance with the provisions of Article 11 hereof, if the violator has not cured such violation within a reasonable time as determined by the DCC.

## **ARTICLE 6 - APPROVAL OF PLANS**

**6.1 Approval Required.** Subject to the provisions of subdivision 5.1.1.2 hereof, no construction or exterior alteration of any Building Site, Building or other Improvement may be initiated without the Approval of the plans and specifications for such construction or alteration by the DCC. The DCC shall have the sole discretion to determine whether plans and specifications submitted for its Approval are acceptable to the DCC, and the

DCC shall be entitled and empowered, in accordance with the provisions of Article 11 hereof, to enjoin or remove any construction undertaken pursuant to plans and specifications that have not been Approved by the DCC, if such Approval is required by Article 5. The procedures set forth in this Article 6 may be supplemented and interpreted from time to time by actions of the DCC not inconsistent with Article 6 or the statement of purpose set forth in Article 2 hereof.

## 6.2 Preliminary Plan Review Procedure.

6.2.1 Prior to the commencement of detailed design work with respect to proposed Improvements, and in any event prior to commencement of any construction or site improvement work (including, without limitation, any grading), the Owner or Occupant proposing to construct or install such Improvements shall meet with a member of the DCC or such other Person as may be designated by the Chairman of the DCC to discuss the nature of such proposed Improvements. At such meeting the Person proposing to develop a Building Site shall provide the DCC's representative with a copy of any preliminary plans for such proposed Improvements, including, without limitation, any one or more of the following: a preliminary site development plan, preliminary architectural drawings, a preliminary site utility plan, a preliminary grading and drainage plan, a preliminary landscaping plan, a boundary survey, or a topographic map. All plans will be submitted in paper format as well as in acceptable CAD format.

6.2.2 After submitting the preliminary plans referred to in paragraph 6.2.1 and before submitting the final plans referred to in Section 6.3, the Person which submitted the preliminary plans shall submit to the DCC for Approval its design development plans. Such submittal shall include, as a minimum, design development site plans and sections, design development elevations, preliminary identification of exterior building materials, preliminary landscaping plans, design development roof plans, design development utility plans, a parking plan, an artist's rendering, and such other items as the DCC may from time to time require. The DCC shall use its reasonable efforts to Approve or disapprove the submitted design development plans within ten (10) Business Days after its receipt thereof.

## 6.3 Submission of Final Plans.

6.3.1 The Person proposing to develop a Building Site shall submit three (3) copies of its proposed final plans to the DCC; *provided, however*, such Person shall schedule a date for presentation of such plans to the DCC at least seven (7) Business Days prior to the proposed presentation date. The DCC may, in its discretion, waive such presentation if such final Plans are determined by the DCC to be consistent with the preliminary Plans previously Approved by the DCC. The DCC will use its reasonable efforts to take action on these final plans within ten (10) Business Days after its receipt thereof.

6.3.2 The plans submitted for final review (which submission shall be made at least seven (7) Business Days prior to the scheduled presentation of such plans to the DCC) shall be substantially the same plans as the Person proposes to submit to the Governmental Authority having jurisdiction, for the purpose of obtaining a building permit, shall substantially comply with all applicable Requirements of such Governmental Authority, including, without limitation, the Zoning Conditions, and shall (unless the DCC and such Person shall otherwise agree in writing) include the following:

6.3.2.1 A boundary survey and a site plan showing such of the following as the DCC shall request:

6.3.2.1.1 Dimensional locations of each proposed Building, drive, paved area, setback, fence, wall, sign, walk, and service element;

6.3.2.1.2 Setbacks of proposed Improvements from boundary lines of the subject Building Site;

6.3.2.1.3 Site grading and drainage of the entire site with two-foot minimum contours, finished floor elevations, spot grades at building corners, drainage low points, driveways, swales, and entries;

6.3.2.1.4 Total square footage of gross floor area contained in proposed buildings, together with a breakdown of such square footage by floor;

6.3.2.1.5 Location of proposed utility lines and service elements and drainage facilities, including, without limitation, utility connections, meters, transformers, trash and garbage containers, air-conditioning units, underground lines, pipes, retention ponds, and headwalls;

6.3.2.2 A landscaping plan showing types, sizes, and locations of all grassed areas, trees, and shrubs to be planted, moved, or preserved;

6.3.2.3 Complete exterior elevations and floor plans of each Building or building type;

6.3.2.4 Description (including samples and/or manufacturer's data) of proposed exterior materials, finishes, and colors (including those for walls, roofs, windows, doors, paving, fences, signs, and exterior lighting fixtures);

6.3.2.5 A professional color rendering of the principal elevation; and

6.3.2.6 A written statement signed by the Person submitting such plans describing, insofar as such Person is aware, how the proposed development shall comply with the Zoning Conditions and any development standards for the Property promulgated by the DCC.

6.3.3 To insure proper identification, all drawings for both initial and final submissions must include the following identifying data:

6.3.3.1 Name, address, and phone number of the Person proposing to make the improvements to a Building Site;

6.3.3.2 Name, address, and phone number of the architect, professional engineer, and/or land surveyor preparing the plans;

6.3.3.3 Street address and name of the Building or Building Site, if available

6.3.3.4 Scale of each drawing and north arrow; and

6.3.3.5 For a re-submission, the nature and dates of the revisions.

6.3.4 All plans and specifications submitted to the DCC must be prepared under the personal direction of an architect, professional engineer, and/or land surveyor and must bear their respective seal, signature, and certification. All plans will be submitted in paper formant as well as acceptable CAD format.

## 6.4 Plan Approval.

6.4.1 The DCC shall act promptly to review both initial and final submissions and shall have broad discretion to Approve or disapprove submitted plans. Two (2) sets each Approved submission will be made a part of the permanent records of the DCC and one (1) set returned to the submitting Person.

6.4.2 If the DCC rejects any submission made by any Person, the DCC, on the request of such Person, shall provide a written statement of the reasons for rejection, shall suggest revisions that meet the DCC requirements, and shall otherwise make reasonable efforts to aid the submitting Person in preparing a proposal that would be acceptable to the DCC. If costs are incurred by the DCC with such efforts, the payment of all such costs by the submitting Person shall be a condition precedent to final Approval.

6.4.3 Any subsequent re-submission by any Person shall be reviewed and acted upon by the DCC as outlined herein, and the DCC shall use its reasonable efforts to respond thereto, within ten (10) Business Days after its receipt thereof.

6.4.4 Without limiting the generality of the DCC's discretion to Approve or disapprove plans, the DCC may disapprove any plans submitted hereunder for any one or more of the following reasons, or other reasons as the DCC may specify:

6.4.4.1 Failure of the plans or the submitting Person to comply with any of the design or development standards set forth in Section 6.5 hereof or from time to time established by the DCC;

6.4.4.2 Failure by the submitting person to include in the plans such information as may have been reasonably requested by the DCC;

6.4.4.3 Objection by the DCC to the exterior design, color scheme, finish, proportions, style or architecture, height, appearance, or materials of any proposed Improvement;

6.4.4.4 Incompatibility of any proposed Improvement with the Land Use Plan or an existing Improvements upon other Building Sites in the vicinity of the Building Site in question;

6.4.4.5 Objection by the DCC to the location of any proposed Improvement upon any Building Site or with reference to other Building Sites;

6.4.4.6 Objection by the DCC to the grading plan for any Building Site;

6.4.4.7 Objection by the DCC to parking areas proposed for any Building Site because of the insufficiency or location of the parking areas or the visibility of such parking areas from any Common Areas, any of the streets and roads located within TANNERS CREEK or any neighboring Building Sites;

6.4.4.8 Objection by the DCC to the height or density of a proposed Improvement or the ratio of parking spaces on the Building Site to gross square footage of floor area in the Improvements or to the size of such parking space; or

6.4.4.9 Failure of the plans or the submitting Person to comply substantially with any applicable Requirements of Governmental Authorities having jurisdiction affecting development of the subject Building or Building Site, including the Zoning Conditions, or any other restrictions limiting the percentage of the Building Site which may be covered by the Building or parking areas.



6.4.5 Approval of any plans with regard to a Building Site (i) shall not be deemed a waiver of the DCC's right, in its discretion, to disapprove similar plans, or any of the features or elements included therein, submitted for any other Building Site, and (ii) shall be final as to the Building Site for which they have been submitted, provided that the Improvements on such Building Site are constructed and maintained in substantial conformity with the Approved plans.

6.4.6 Under no circumstances shall a Person submit its plans and specifications to the Governmental Authority having jurisdiction for review and approval unless it has received DCC Approval.

**6.5 Design Criteria.** The following criteria, together with any other criteria adopted by the DCC in accordance with Section 6.6 hereof, shall be used by the DCC to determine the suitability of all proposed Improvements in or on the Property.

**6.5.1 Yard and Area.**

6.5.1.1 No Improvements (except signage, underground utilities, driveways, sidewalks and landscaping) shall be constructed or installed (a) in any area designated as a "Landscaping Buffer" or "Landscaping Strip" on any recorded plat of TANNERS CREEK or any portion thereof, (b) within thirty (30) feet of any boundary line of any Building Site which abuts a publicly dedicated street or road or a street or road constructed by Grantor to be dedicated, (c) within ten (10) feet of any other boundary line of any Building Site, or (d) within thirty-five (35) feet of the mean high water mark of any lake, pond, creek, branch or other stream flowing on, over, through or across any Building Site. However, with respect to any Building Site used for service, commercial or retail Property Uses, including, without limitation, branch banks, day-care centers and restaurants, the DCC may waive in their entirety clauses (b) and (c) of this paragraph.

6.5.1.2 Unless the deed or other instrument executed by Grantor conveying a Building Site shall provide to the contrary or unless Approved by the DCC, no Improvements shall be constructed on a Building Site which have a "total floor area" greater than the product obtained by multiplying the number of acres comprising such Building Site times ten thousand (10,000) square feet. The term "Total floor area" shall mean the sum of the gross horizontal areas of the floors of a Building measured from the exterior faces of the exterior walls or from the centerline of any walls separating two Buildings. "Total floor area" shall not include attic space providing headroom of less than seven (7) feet, cellar space, uncovered steps or fire escapes, cooling towers, off-street parking spaces and loading berths.

**6.5.2 Site Placement.** All Buildings and other Improvements shall be placed so that the existing topography and landscape shall be disturbed as little as possible, and so that the maximum number of desirable trees and other natural features will be preserved. Written permission must be obtained from the DCC before the commencement of any removal or other disturbance of any trees or other natural features other than routine upkeep and maintenance of landscaping, including, without limitation, seasonal plantings and removal of deadwood, dead trees, shrubs, plants and ground cover.

**6.5.3 Parking, Loading, and Unloading Areas.** Unless a specific express waiver or variance is granted by the DCC:

6.5.3.1 No parking shall be permitted on any street, road or drive, or any place other than the paved parking spaces. Each Owner and Occupant shall be responsible for the enforcement of compliance with this provision by its employees and visitors.

6.5.3.2 Parking spaces for the handicapped shall be provided as close to Building entrances as possible.

6.5.3.3 Off-street automobile parking and unloading spaces shall be as Approved by the DCC. All parking visible from public roads shall be screened as well as practicable from view by the use of earth berms or landscaping materials. However, with respect to any Building Site used for service, commercial or retail Property Uses, including, without limitation, branch banks, day-care centers and restaurants, the DCC may waive in part or in their entirety the criteria set forth in this subparagraph 6.5.3.3.

6.5.3.4 Paved areas larger than twenty thousand (20,000) square feet on any Building Site shall have landscaped islands intermittently placed;

6.5.3.5 Loading areas shall not encroach into setback areas or be visible from any street, road, or highway. Loading docks shall be set back and screened to minimize the effect of their appearance from neighboring Building Sites.

**6.5.4 Service, Screening, and Storage Areas.** Garbage and refuse containers shall be concealed and contained within the Buildings or shall be concealed by means of a sufficiently high screening wall of material similar to and compatible with that of the Building. These elements shall be integrated with the concept of the Building plan, and designed so as not to attract attention, and shall be located in a most inconspicuous manner. Unless specifically Approved by the DCC, no materials, supplies, or equipment shall be stored in any area on a Building Site except inside a closed Building, or behind a visual barrier screening such areas so as not to be visible from neighboring Building Sites, Common Areas or public streets.

**6.5.5 Streets, Roads, Drives, Curbs and Walks.** Streets, roads, drives, curbs and walks shall be located within the overall transportation plan of TANNERS CREEK and constructed or altered in accordance with plans and specifications submitted to and Approved by the DCC. Existing pedestrian walkways shall be retained and proposed Buildings shall be linked to the overall pedestrian circulation system by walkway.

**6.5.6 Landscaping.** Every Building Site on which a Building shall have been placed shall be landscaped in accordance with plans and specifications Approved by the DCC. Landscaping as approved by the DCC shall be installed within thirty (30) days after occupancy or substantial completion of the Building, whichever occurs first.

**6.5.7 Exterior Materials, Colors.** Finish building materials shall be applied to all sides of a Building which are visible to the general public, as well as from neighboring Building Sites and public streets. Colors shall be harmonious and compatible with colors of the natural surroundings and other adjacent Buildings. The DCC shall have the sole right to Approve or disapprove materials and colors.

**6.5.8 Signs.** Signs shall be designed, erected, altered, reconstructed, moved, and maintained in whole or in part in accordance with plans and specifications Approved by the DCC. The location and height of Building identification signs shall conform to design criteria for signs adopted by the DCC.

**6.5.9 Utilities, Mechanical Equipment, and Roof Projections.**

6.5.9.1 All mechanical equipment, utility meters, and storage tanks shall be located and/or screened as appropriate as determined and Approved by the DCC so to minimize visual impact of such items.

Antennae, satellite dishes, and other communications devices shall be visually masked to the extent practicable and consistent with appropriate electromagnetic considerations.

6.5.9.2 Penthouses and mechanical equipment screen walls shall be of a design and materials similar to and compatible with those of the Building.

6.5.9.3 Underground utility lines throughout TANNERS CREEK shall be used unless exception is made by the DCC. No transformer, electric, gas, water, or other meter of any type or other apparatus shall be located on any power pole or hung on the outside of any Building, but same may be placed on or below the soil surface, and where so placed, shall be adequately screened from view.

6.5.9.4 Large items such as air conditioning, ventilating, or other mechanical equipment shall be screened or enclosed in such manner as to mask such equipment.

6.5.10 **Exterior Lighting.** All exterior lighting shall be designed, erected, altered, and maintained in accordance with plans and specifications Approved by the DCC to the end that lighting shall be compatible and harmonious throughout TANNERS CREEK; however, with respect to any Building Site, the DCC may Approve higher intensity lighting as may be necessary for security or accent reasons.

## 6.6 Additional Design Criteria; Variances.

6.6.1 **Additional Design Criteria.** In addition to the design criteria set forth in Section 6.5 hereof, the DCC may from time to time promulgate and adopt additional design criteria that are not inconsistent with those set forth in this Article 6 and that implement the statement of purpose set forth in Article 2 hereof. Any such additional design criteria promulgated by the DCC may from time to time be amended by the DCC.

6.6.2 **Variances.** The DCC, in its sole discretion, may from time to time authorize variances from compliance with any of the design criteria set forth in or promulgated in accordance with this Declaration, when circumstances such as topography, natural obstructions, hardship, or aesthetic, environmental, or planning objectives or considerations may so warrant. Each such variance must be Approved by the DCC. If such a variance is granted, no violation of this Declaration shall be deemed to have occurred with respect to the variance granted. The granting of a variance shall not operate to waive or to render unenforceable any of the terms and provisions of this Declaration for any purpose except as to the particular Building Site, provision, and instance covered by the variance, nor shall the granting of a variance be deemed to set a precedent with respect to any subsequent requests for variances. Notwithstanding any provision to the contrary contained in this Declaration, the DCC shall not delegate to any single member or group of members or to any other Person the power to grant variances pursuant to this Section 6.6.

6.7 **Submission of Construction Site Logistics Plan.** After Approval of any plans by the DCC, but prior to the commencement of any construction on a Building Site, the Owner or Occupant of such Building Site shall submit to the DCC a proposed construction site logistics plan, which plan shall contain such detail as the DCC may require, including, but not limited to, a description or depiction of (i) the location of field offices, storage trailers, construction period parking, and temporary fences, (ii) proposed traffic control measures, (iii) sanitation facilities, (iv) location and types of construction equipment, (v) the construction schedule, (vi) proposed tree clearing plan, and (vii) soil erosion and sedimentation control measures. Such requirements shall be outlined by the DCC in project review procedures hereafter adopted by the DCC, as such procedures may be amended from time to time. The DCC shall use its reasonable efforts to Approve or disapprove such construction site logistics

plan within ten (10) Business Days after the next regularly scheduled DCC meeting following the submission of such plan to the DCC.

**6.8 Failure of DCC to Act.** If the DCC fails to Approve or disapprove in writing plans submitted to it in accordance with Section 6.2, 6.3 or 6.7 hereof or paragraph 6.4.3 hereof within thirty (30) days after its receipt thereof, such plans shall be deemed to have been Approved as submitted and no further action by the DCC with respect thereto shall be required hereunder with respect to such submitted plans.

**6.9 Post-Approval Inspections.** Following Approval of any plans by the DCC, representatives of the DCC, or its designees or permittees, shall have the right, during reasonable hours without prior notice to enter upon and inspect any Building Site or Improvements then under construction to determine whether the plans have been Approved by the DCC and whether development and construction is proceeding substantially in accordance with such Approved plans. If the DCC shall determine that such plans have not been Approved or that plans which have been so Approved are not being substantially complied with in every material respect, the DCC may in its discretion give the Owner or Occupant of such Building Site and Improvements written notice to such effect, and, at any time thereafter, the DCC shall be entitled to enjoin further construction and to require the removal or correction of any work in place that does not substantially comply with Approved plans. If any Improvements shall be altered or replaced or maintained on any Building Site other than in substantial conformity with the Approved plans therefor, such action shall be deemed to have been undertaken without requisite Approval of the DCC and to be in violation of this Declaration; and the DCC shall be entitled to take action as permitted under this Declaration. A written statement executed by an architect Approved by the DCC for such purpose, which statement certifies the substantial conformity of the construction of the Improvements with the Approved plans therefor, shall constitute conclusive evidence of such conformity.

**6.10 Interior Alterations.** Except as otherwise provided in paragraph 5.1.1.2, an Owner or Occupant may make improvements and alterations within the interior of its Building without DCC Approval.

**6.11 Construction After Approval.**

6.11.1 The Owners or Occupants shall, upon its receipt of Approval from the DCC, satisfy any conditions thereof and diligently proceed with the commencement and completion of all Approved construction. Unless work on the Approved construction shall have been commenced within six (6) months after the date of such Approval and thereafter continuously prosecuted to completion, the Approval automatically shall be revoked, unless the DCC has given written permission for an extension of time for commencing work.

6.11.2 During the period of construction of any Improvement within TANNERS CREEK and until completion thereof, the Owner or Occupant performing such construction, or for whose benefit such construction is being performed, shall continuously employ an architect or professional engineer, licensed under the laws of the State of Georgia who shall periodically, but not less frequently than monthly, inspect such work to determine that the work is proceeding substantially in accordance with the Approved plans for such work. Such architect or engineer shall prepare on a periodic basis, but not less frequently than monthly, and deliver to such Owner or Occupant and the DCC a report of such inspection and the compliance or noncompliance, as the case may be, of such work. In addition, such architect or engineer shall represent such Owner or Occupant in all dealings and communications with the DCC during the period of construction.

6.12 **Actions Binding.** Actions of the DCC through its Approval or disapproval of plans, specifications, and other information submitted pursuant to the provisions of this Article 6, or in respect of any other matter before it, shall be conclusive and binding on all parties.

6.13 **Communications to DCC.** All communications to the DCC shall be addressed as follows:

Tanners Creek Design Control Committee  
5634 Atlanta Hwy., Suite 500  
Flowery Branch, Georgia 30542  
Telephone: (770) 967-6131, Fax: (770)967-6132

or to such address as the DCC shall hereafter designate in writing to Owners and Occupants, by Federal Express, certified mail or by Grantor's recordation of such address change as an amendment to this Declaration. Applications for Approval hereunder are to be submitted in triplicate to the DCC at the above address. Approval of plans and specifications by the DCC shall be in writing and in accordance with DCC procedures.

6.14 **Rights of Third Parties.**

6.14.1 Approval by the DCC of any plans with regard to a Building Site shall not constitute any judgment or opinion on the part of the DCC or any members thereof, or the Appointing Authority or any officer, Partnership, Partner, General Partner, director, employee, agent, or member thereof, as to the quality or soundness of the matters described in such plans or their fitness for any particular use or application. In particular, such Approval shall not be construed as a representation to third parties concerning the quality of the construction of any Improvements or the absence therefrom of any defects.

6.14.2 Should the DCC or the Appointing Authority, or officer, Partnership, General Partner, director, employee, agent, or member thereof, be joined in any litigation as a result of or based upon any Approval of any plans, or any construction undertaken pursuant thereto, the Person or Persons who submitted such plans to the DCC for Approval shall, jointly and severally (if more than one), indemnify and hold harmless the DCC and each such officer, Partnership, partner, General Partner, director, employee, agent, or member, from and against any and all expenses, losses, or liabilities, including, without limitation, court costs and reasonable attorneys' fees, incurred by them (or any of them) in connection with or as a result of such litigation.

## ARTICLE 7 – OWNERS ASSOCIATION

7.1 **Establishment.**

7.1.1 Prior to the date on which the Owners Association is vested with its powers and duties in accordance with paragraph 7.1.6 hereof, Grantor shall establish the Owners Association as an Association of all of the Owners in accordance with the provisions of the Georgia Nonprofit Corporation Code, as then in effect; and each Owner, by accepting a deed to any Building Site, shall thereby be deemed to have consented to be an Owners Association member and bound by Articles of Incorporation, the by-laws and rules and regulations of the Owners Association.

7.1.2 So long as Grantor owns any Real property or any interest therein within TANNERS CREEK, excluding Common Areas, Grantor shall automatically be a member of the Owners Association in addition to any membership it may possess under paragraph 7.1.3 hereof. The membership rights granted to Grantor under this paragraph 7.1.2 may only be transferred to a successor Grantor.

7.1.3 Each Owner of a Building Site, including Grantor, shall automatically be a member of the Owners Association. Each Owner of a Building Site shall remain a member of the Owners Association for the entire period of ownership. If title to a Building Site is shared by more than one Person, the membership shall be shared in the same proportion as the title, but there shall be only one membership for each Building Site. Membership shall be appurtenant to the Building Site to which it appertains, shall be transferred automatically by conveyance of that Building Site and may be transferred only in connection with the conveyance of title of that Building Site.

7.1.4 So long as Grantor, or any Person comprising Grantor, owns any Real Property or any interest therein within TANNERS CREEK, excluding Common Areas, Grantor shall have the sole and exclusive right, power and authority to appoint or remove the members of the Board of Directors and the officers of the Owners Association. Upon the expiration of the period of Grantor's right to appoint and remove members of Board of Directors and officers of the Owners Association, such right shall automatically pass to the Owners, including Grantor, if Grantor is then an Owner, and a special meeting of the Owners Association shall be called. At such special meeting, the Owners shall elect a Board of Directors and shall undertake the responsibilities of the Owners Association. Notwithstanding the foregoing, Grantor may, at its option and at any time, assign and invest in the Owners the right, power and authority to appoint and remove the members of the Board of Directors and the officers of the Owners Association.

7.1.5 Upon the expiration of the period of Grantor's right to appoint and remove members of Board of Directors and officers of the Owners Association, or sooner if Grantor should so elect, Grantor shall convey, transfer, and assign to the Owners Association and the Owners Association shall accept, the Grantor's right, title, and interest, if any, in and to the existing Common Areas and Common Facilities (as then existing), reserving and excepting from such conveyance, transfer, and assignment, the rights, privileges, and easements granted herein to it as an Owner or otherwise reserved by it hereunder.

7.1.6 Notwithstanding anything to the contrary set forth in this Declaration and in addition to Grantor's exclusive right, power and authority to appoint or remove the members of the Board in accordance with paragraph 7.1.4 hereof, so long as Grantor, or any Person comprising Grantor, owns any Real Property or any interest therein within TANNERS CREEK and until Grantor should otherwise elect, the Owners Association shall not exercise any of the powers granted to it herein or be required to perform any of the duties set forth herein until the earlier to occur of (a) the date on which Grantor assigns and invests in the Owners Association such powers or duties, or (b) the date on which Grantor, or any Person comprising Grantor, no longer owns any Real Property or any interest therein within TANNERS CREEK. Grantor shall have all of the powers and duties of the Owners Association set forth in this Article 7 until the powers and duties vest in the Owners Association in accordance with the preceding sentence.

## 7.2 Purpose.

7.2.1 The Owners Association is formed to provide for the maintenance, improvement, and beautification of Common Areas, Common Facilities and Project Area of TANNERS CREEK and to undertake such other activities as are related to maintaining TANNERS CREEK as a desirable development for members of the Owners Association.

7.2.2 The Owners Association shall be authorized to hold title to property and may accept and retain title to those lands and properties designated as Common Areas and Common Facilities within TANNERS CREEK and such other open or park areas as may hereafter be designated as Common Areas by Grantor and hereafter deeded to such legal entity or nominee; *provided, however*, title to the Common Areas and

Common Facilities will not be conveyed to the Owners Association except in accordance with paragraph 7.1.5 hereof.

### 7.3 Duties.

7.3.1 The duties and powers of the Owners Association shall be those granted to it in this Declaration, the Georgia Nonprofit Corporation Code, and its Articles of Incorporation and by-laws, together with those reasonably implied to effect the purposes of the Owners Association. In addition, if one or more Community Improvement Districts (as defined in Article 9, Section 7 of the Constitution of the State of Georgia (1983)) have been or are hereafter created by any Governmental Authority and the Requirement of such Governmental Authority so creating the same provides that all or part of the members of the board of any such Community Improvement District be elected or appointed by an association of owners within all or part of TANNERS CREEK, then, to the extent permitted by applicable law, the Owners Association, acting by and through the Board, shall so elect or appoint the members of the board of any such Community Improvement District.

7.3.2 The Owners Association shall be responsible for the maintenance, security, landscaping and upkeep of the Common Areas, the Common Facilities and the Project Area and for any other maintenance, security, landscaping and upkeep which inures to the common benefit of the Owners and Occupants, including the installation and maintenance of project signage (even though such signage may be located within the property of an Owner) and the installation and maintenance of landscaping within the rights of way of public roads and streets. The Owners Association shall pay or arrange for payment directly by its members as set forth in Section 7.5, for utility and other services that may be required for street lighting, sprinkler systems, upkeep of directory signs, general maintenance, landscaping, security and other common benefits and uses.

7.3.3 Except to the extent otherwise required by the Georgia Nonprofit Corporation Code, this Declaration, or the Owners Association's Articles of Incorporation and by-laws, the powers herein or otherwise granted to the Owners Association shall be exercised by the Board of Directors of the Owners Association, acting through its officers, without any further consent or action on the part of the Owners.

### 7.4 Voting.

7.4.1 Subject to paragraph 7.1.4 hereof, the right to cast votes, and the number of votes that may be cast, for the election of members of the Board of Directors of the Owners Association and on all matters to be voted on by the members of the Owners Association shall be calculated as follows:

7.4.1.1 In addition to any votes which Grantor may have under subparagraph 7.4.1.2 hereof, Grantor shall have two (2) votes for each acre or partial acre of land owned by Grantor or any Person comprising Grantor within TANNERS CREEK and not then designated as a Building Site by the DCC.

7.4.1.2 Each Owner, including Grantor, shall have one (1) vote for each Building Site owned.

Unless expressly set forth herein to the contrary, a majority vote (based on the number of votes cast) shall control; *provided, however*, subject to paragraph 7.4.2 hereof, any Owner may assign any vote to which it is entitled to any Occupant on such terms as they may agree upon, and while any Occupant is entitled to a vote, such Occupant shall be deemed a member of the Owners Association to the extent of the vote or votes assigned.

7.4.2 If any property interest, ownership of which entitled the Owner thereof to vote, is held jointly or in common by more than one Person, the vote or votes to which such property interest is entitled shall also be held jointly or in common in the same manner. However, the vote or votes for such property interest shall be cast, if at all, as a unit, and neither fractional votes nor split votes shall be allowed. In the event that the Persons that constitute an Owner are unable to agree among themselves as to how their vote or votes shall be cast as a unit, they shall lose their right to cast their votes on the matter. Any Person that constitutes part of an Owner shall be entitled to cast the votes for that Owner unless another Person that constitutes part of that Owner shall have delivered to the Secretary of the Owners Association prior to the election a written statement to the effect that the Person wishing to cast the votes has not been authorized to do so by the other Persons that constitute a part of the Owner. Any Owner, including Grantor, may give a revocable written proxy to any Person authorizing that Person to cast the Owner's vote on any matter. Such written proxy shall be in such form as may be prescribed by the Bylaws of the Owners Association. The cumulative system of voting shall not be used for any purposes.

## 7.5 Assessments.

7.5.1 **Obligation.** Each Owner of a Building Site, including, without limitation, Grantor, and Grantor, as the owner of the balance of TANNERS CREEK, covenant and agree to pay to the Owners Association annual Assessments or charges and special Assessments or charges provided by this Declaration, together with interest thereon, which shall be fixed, established and collected from time to time as hereinafter provided.

7.5.2 **General Assessments.** From and after the date hereof, the amount of all Common Area Costs and Project Area Costs not specially assessed pursuant to the other provisions of this Declaration, less the amount of all undistributed and unreserved common profits, shall be assessed against each Building Site and the balance of TANNERS CREEK as follows: (i) each Building Site's share of the Common Area Costs and Project Area Costs shall equal the sum of (a) all Common Area Costs multiplied times a fraction, the numerator of which is the acreage within the Building Site and the denominator of which is the total acreage within all Assessment Land, plus (b) all Project Area Costs multiplied times a fraction, the numerator of which is the acreage within the Building Site and the denominator of which is the total acreage within TANNERS CREEK; and (ii) the balance of such Common Area Costs shall be assessed against that portion of the Assessment Land owned by Grantor and the balance of such Project Area Costs shall be assessed against that portion of the Project Area owned by Grantor. Solely for purpose of allocating the Common Area Costs and the Project Area Costs in accordance with this paragraph 7.5.2, (i) a Public Service Site shall be deemed to contain only twenty-five percent (25%) of its actual acreage and the balance thereof shall be excluded from the Assessment Land and from the total acreage of TANNERS CREEK, (ii) the land within a Utility Provider Site shall be excluded from the Assessment Land and the total acreage of TANNERS CREEK, and (iii) the land area within a Special Assessment Area shall be excluded from the Assessment Land for the purpose of allocating Common Area Costs, but shall be included within the total acreage of TANNERS CREEK for the purpose of allocating Project Area Costs. The annual Assessment payable by each Owner and Grantor under this paragraph 7.5.2 shall be levied by the Board of Directors after the same is determined in the manner set forth in this paragraph 7.5.2. At or before December 1 of each year, the Board of Directors shall prepare, adopt and submit in writing to the Owners and Grantor a budget of the Common Area Costs and the Project Area Costs for the next succeeding Fiscal Year to be paid by Assessments collected from the Owners and Grantor, together with notice of the amount of the annual Assessment payable by each Owner and Grantor during such Fiscal Year. If said budget proves inadequate for any reason, then the Board of Directors may levy at any time an additional Assessment against the Owners and Grantor and notify the Owners and Grantor accordingly. If for any reason an annual budget is not adopted by the Board of Directors as required hereby, a payment in the amount required by the last prior



Assessment shall be due upon each Assessment due date until changed by a new budget adopted by the Board of Directors.

Each Owner and Grantor shall be obligated to pay such Assessments to the Owners Association annually or in such other reasonable manner as the Board of Directors shall designate. In any year in which there is an excess of Assessments and other income over expenditures, the Board of Directors shall apply such excess and reduce the subsequent year's Assessments.

**7.5.3 Special Assessment Areas.** The DCC may designate, as "Special Assessment Areas", specific areas within TANNERS CREEK where the level and extent of services to be provided by the Owners Association may differ from other areas of TANNERS CREEK. When a Special Assessment Area is designated, the Owners Association shall develop a method for apportioning Special Assessment Area Common Area Costs among Owners of property located within the Special Assessment Area and the Owners of Building Sites within a Special Assessment Area shall pay the Special Assessment Area Common Area Costs in lieu of the Assessments due hereunder for Common Area Costs; however, Owners of Building Sites within a Special Assessment Area shall also pay the Assessment due hereunder for Project Area Costs.

**7.5.4 Priority of Lien.** All sums assessed pursuant to this Declaration against any Building Site or any Assessment Land and Project Area owned by Grantor, together with court costs, reasonable attorneys' fees, late charges, and interest as provided herein, shall be secured by an equitable charge and continuing lien on such property in favor of the Owners Association. Such lien shall be superior to all other liens and encumbrances on such property except only for: (i) liens of ad valorem taxes, and (ii) a lien for all sums unpaid on a first priority Mortgage, on any secondary purchase money Mortgage, or on any Mortgage to Grantor, and all amounts advanced pursuant to such Mortgage and secured thereby in accordance with the terms of such instrument; provided however, that the subordination of the lien for Assessments to the foregoing Mortgages shall apply only to Assessments that have become due and payable prior to a sale or transfer of such Building Site pursuant to a Foreclosure. Such sale or transfer shall not relieve such Building Site from liability for any Assessments accruing after such sale or transfer. All Persons acquiring other Mortgages, liens or encumbrances on any Building Site after the effective date of this Declaration shall be deemed to have subordinated such Mortgages, liens or encumbrances to such future liens for Assessments as provided herein, whether or not such subordination shall be specifically set forth in such Mortgages or other instruments creating such liens or encumbrances.

**7.5.5 Nonpayment of Assessments.** Any Assessments or any portion thereof that are not paid when due shall be delinquent. Any Assessment delinquent for a period of more than ten (10) calendar days shall incur a late charge in an amount as may be determined by the Board of Directors from time to time, and the Board of Directors shall cause a notice of delinquency to be given to any Owner or Grantor not paying within ten (10) calendar days following the due date. If any installment of an Assessment has not been paid within thirty (30) calendar days of the due date therefor, the entire unpaid balance of the Assessment may be accelerated at the option of the Board of Directors and, if so accelerated, shall thereupon become forthwith due and payable in full. The continuing lien and equitable charge of such Assessment shall include the late charge established by the Board of Directors, interest on the principal amount due at the maximum rate allowable under the laws of the State of Georgia (not to exceed the Prime Rate, as it may change from time to time, plus four percentage points, all costs of collection (including reasonable attorneys' fees and court costs), and any other amounts provided or permitted hereunder or by law. If the Assessment remains unpaid after sixty (60) calendar days from the original due date, the Owners Association may, as the Board of Directors shall determine, institute suit to collect such amounts and to foreclose its lien. The equitable charge and lien provided for in this Section shall be in favor of the Owners Association; and each Owner

and Grantor vest in the Owners Association or its agents the right and power to sue or otherwise proceed against such Owner or Grantor for the collection of such charges and/or to foreclose the Owners Association's liens. The Owners Association shall have the power to bid on the Building Site at any foreclosure sale and to acquire, hold, lease, mortgage, and convey the same.

**7.5.6 Suit to Collect.** In addition to the lien rights granted herein, any delinquent Assessment shall be a personal obligation of the then Owner or Grantor and, upon any conveyance of the property subject to such lien, shall become the joint and several obligation of such Owner or Grantor, as the case may be, and of such Owner's or Grantor's successors-in-title, whether or not expressly assumed by them.

**7.5.7 Exemptions.**

7.5.7.1 The following property and Persons subject to this Declaration shall be exempted from the Assessments hereunder:

7.5.7.1.1 The Grantee in conveyances made for the purpose of granting utility easements;

7.5.7.1.2 All Common Areas and Common Facilities owned in fee simple by Grantor, or the Owners Association or any Governmental Authority, and all Improvements of every kind constructed, installed, or planted by Grantor or the Owners Association or any Governmental Authority, in any part of the Common Areas; and

7.5.7.1.3 All Utility Provider Sites as designated by the DCC, only for so long as any Utility Provider Site is used for such Property Use. If the Utility Provider Site ceases to be used for such Approved Property Use for a period of six (6) consecutive calendar months, the Utility Provider Site shall *ipso facto* cease to be a Utility Provider Site, shall again be subject to the obligation to pay the full Assessments applicable to such Building Site and Building Site's acreage will be included within the Assessment Land and TANNERS CREEK for purposes of paragraph 7.5.2 hereof.

7.5.7.2 A Public Service Site, as determined and designated by the DCC but only for so long as the same is used for the Property Use specifically approved by the DCC, shall be obligated to pay only twenty-five percent (25%) of the Assessments that would otherwise have been payable by the Owner thereof. If the Public Service Site ceases to be used for such Approved Property Use for a period of six (6) consecutive calendar months, the Public Service Site shall *ipso facto* cease to be a Public Service Site, shall again be subject to the obligation to pay the full Assessments applicable to such Building Site and one hundred percent (100%) of such Building Site's acreage will be included within the Assessment Land and TANNERS CREEK for purposes of paragraph 7.5.2 hereof.

7.5.7.3 Owners of property located within Special Assessment Areas shall annually pay Project Area Costs in accordance with the provisions of paragraph 7.5.2, plus Special Assessment Area Common Area Costs as determined in accordance with the provisions of paragraph 7.5.3 in lieu of TANNERS CREEK Common Area Costs. However, until such time as Special Assessment Area Common Area Costs are imposed on a property, the Owner shall continue to pay TANNERS CREEK Common Area Costs in accordance with the provisions of paragraph 7.5.2.

**7.5.8 Special Assessments for Damage.** In addition to all other Assessments, the Board of Directors may at any time, in its discretion, levy a special Assessment against the Owner of any Building Site or Grantor for (i) the repair of any damage to any area, including, without limitation, Common Areas and public road rights of way (other than normal wear and tear), caused by the Owner of such Building Site,

such Owner's permittees or Grantor, as the case may be, or (ii) the repair of any damage to any retention pond in the Common Areas which is caused by excess siltation resulting from the activities of the Owner of such Building Site, such Owner's permittees or Grantor, as the case may be. The notice of such special Assessment shall describe the nature of the damage and the necessary repairs, and any special Assessment shall be due and payable to the Owners Association on or before the tenth (10th) day following such Owner's or Grantor's, as the case may be, receipt of such notice. The Board of Directors may, in its discretion, levy any such special Assessment prior to the commencement of the repairs for which such special Assessment is levied; provided that upon receipt of payment of such special Assessment the Board of Directors shall promptly undertake to have such repairs made and shall refund to such Owner or Grantor, as the case may be, any excess of the amount assessed and paid over the cost of such repairs. In the event that the cost of such repairs exceeds the amount assessed and paid, the Board of Directors may assess such Owner or Grantor, as the case may be, for such excess costs. By illustration and not limitation, the special Assessments provided for in this Section 7.5.8 may be made for the purposes of repairing roadway damage caused by heavy trucks and construction vehicles during construction on any Building Site, or for excess siltation resulting from construction activity on any Building Site.

**7.5.9 Waiver of Use.** Neither Grantor nor any Owner may exempt itself from personal liability for Assessments duly levied by the Owners Association, nor release the Building Site or other property owned by it from the liens and charges hereof, by non-use or waiver of the use and enjoyment of the Common Areas and Common Facilities or by abandonment of its Building Site or other property owned by Owner or Grantor.

**7.6 By-Laws.** The Board of Directors shall establish by-laws for the conduct of the Owners Association's affairs which shall include reasonable notice to each member prior to any meeting. Decisions of the Owners Association shall be by majority of votes cast at any meeting, except as otherwise provided herein above.

**7.7 Employment of Manager.** In performing its responsibilities hereunder, the Owners Association, through its Board of Directors and officers, shall have the authority to delegate to Persons of its choice (including, without limitation, Grantor or Persons affiliated with Grantor) such duties of the Owners Association as may be determined by the Board of Directors. In furtherance of the foregoing and not in limitation thereof, the Owners Association may employ any Person (including, without limitation, Grantor or Persons affiliated with Grantor) to manage its affairs or any part thereof, as well as such other personnel as the Owners Association shall deem necessary or desirable, whether such personnel are furnished or employed directly by the Owners Association or by any Person with whom or with which it contracts. All reasonable costs and expenses actually incurred incident to the employment of a manager shall be a Common Area Cost of the Owners Association.

**7.8 Legal and Accounting Services.** The Owners Association may pay, as a Common Area Cost, for such legal and accounting services as are reasonably necessary or desirable in connection with the conduct of the business and affairs of the Owners Association or the interpretation, amendment, or enforcement of this Declaration, the by-laws of the Owners Association, or the published rules and regulations of the Owners Association.

**7.9 Rules and Regulations.** The Owners Association, through its Board of Directors, may from time to time and at any time (but is not obligated to) make, establish, abolish, amend and/or enforce reasonable nondiscriminatory rules and regulations concerning the use of TANNERS CREEK or any portion thereof, including, without limitation, the Common Areas and Common Facilities. The text of any such rules and regulations and amendments thereto shall be furnished by the Owners Association to each Owner. Such rules and regulations shall be binding upon the Owner and Occupants until and unless such rules or regulations are specifically overruled, cancelled or modified by the Association by the vote of its members, in person or by

proxy, holding sixty percent (60%) of the total votes in the Association. Notwithstanding the foregoing, the approval of the Owners Association shall not be required in order to give effect to any design or development standards adopted by the DCC pursuant to Article 6 hereof.

#### **7.10 Limitation on Liability; Indemnification of Officers and Directors.**

7.10.1 To the extent permitted by applicable law, neither Grantor nor the Owners Association, or any director, officer, agent, or employee thereof shall be liable to any Owner or Occupant or to any other Person for any loss, damage or injury, or claim (thereof, arising out of or in any way connected with the performance or nonperformance of the Owners Association's duties under this Article 7 unless due to the willful misconduct, gross negligence or bad faith of Grantor or the Owners Association, its respective directors, officers, agents or employees.

7.10.2 To the fullest extent permitted by the Georgia Non-Profit Corporation Code, the Owners Association shall indemnify and hold harmless the directors, officers and employees of the Owners Association who may be made a party to a proceeding because the individual is or was a director, officer or employee of the Owners Association. The provisions of Article 8, Part 5 ("Indemnification") of the Georgia Non-Profit Corporation Code shall be incorporated by reference into the Owners Association's Articles of Incorporation and such provisions shall be deemed amended to conform with any subsequent amendments to Part 5 of such Code.

**7.11 Directors and Officers Insurance.** The Owners Association shall purchase and maintain, as a Common Area Cost, directors' and officers' insurance on behalf of any person who is or was a director or officer of the Owners Association against any liability asserted against him and incurred by him in such capacity, or arising out of his status as such.

**7.12 Enforcement of Directors Duties.** In the event that the Board of Directors of the Owners Association shall fail to perform any duty or duties which, under this Declaration, the Georgia Non-Profit Corporation Code or the Articles of Incorporation and by-laws of the Owners Association, are to be performed by it, any Owner who is aggrieved by such failure shall have the right to proceed in equity to compel the Board of Directors to perform such duty or duties. In no event, however, except as otherwise provided in Section 7.10 hereof, shall any member or members of the Board of Directors have any liability to any Owner for any failure by the Board of Directors to perform any such duty or duties. If any such Owner prevails in such proceeding, the Owners Association shall pay to such Owner, as a Common Area Cost of the Owners Association, such Owner's reasonable costs and expenses incurred in connection with such proceeding, including court costs and reasonable attorneys' fees.

**7.13 Damage, Destruction or Condemnation.** Damage to, destruction of or condemnation of all or any portion of the Common Areas or Common Facilities shall be handled in the following manner:

7.13.1 If the insurance proceeds or condemnation award are sufficient to effect total restoration or replacement, then the Owners Association shall cause the Common Areas and the Common Facilities to be so repaired, reconstructed and/or replaced substantially as they previously existed.

7.13.2 If the insurance proceeds or condemnation award are insufficient to effect total restoration, repair and/or replacement of the Common Areas and Common Facilities, then the Board of Directors may (i) cause the Common Areas and Common Facilities to be repaired, reconstructed and/or replaced in a way which utilizes all available insurance proceeds or condemnation award or (ii) elect not to rebuild, repair and/or replace such Common Areas and Common Facilities and thereupon shall raze or otherwise restore

the Common Area and any remaining Common Facilities thereon to a clean, good, safe and sightly condition and reduce the subsequent year's general Assessments under paragraph 7.5.2 hereof.

In the event after any such repair, reconstruction and/or replacement there remains any unused insurance proceeds, condemnation award, the Board of Directors shall apply such excess against and reduce the subsequent year's general Assessments under paragraph 7.5.2 hereof.

#### **ARTICLE 8 - EXTENSION OF DECLARATION TO ADJOINING REAL PROPERTY**

**8.1 Contiguous Property.** Any Declarant who owns real property contiguous to TANNERS CREEK (whether or not such properties are separated by a street, roadway, railroad, right of way or easement) may during the pending period of this Declaration add all or a portion of such real property to that which is subject to this Declaration. Any Declarant who wishes to extend this Declaration to adjoining real property shall file in the Office of the Clerk of Hall County, Georgia, a notice that such additional real property is made subject to this Declaration.

**8.2 Other Property Within One Mile.** In addition, Grantor, or any Person comprising Grantor, may extend this Declaration to any real property located within one (1) mile of any other real property then included within TANNERS CREEK. Grantor, or any Person comprising Grantor, that wishes to extend this Declaration to such other property shall file in the Office of the Clerk of Hall County, Georgia, a notice that such other real property is made subject to this Declaration.

**8.3 Declaration Binding on Additional Property.** Upon such recordation in the Offices of the Clerks of Superior Court of Hall County, Georgia, this Declaration shall run with the land already subject hereto and with the additional real property as if this Declaration had always applied to all of the additional real property from the inception hereof, and shall inure to the benefit of, and be binding upon, the Owners of all such property, all Declarants, and any others having an interest therein, as Occupants or otherwise, their respective heirs, successors, and assigns.

#### **ARTICLE 9 - DURATION, MODIFICATION, AND TERMINATION**

**9.1 Duration.** The provisions of this Declaration shall run with and bind title to TANNERS CREEK, shall be binding upon and inure to the benefit of Declarant and all Owners and Mortgagees, and their respective heirs, executors, legal representatives, successors, and assigns, and shall be and remain in effect until the twentieth (20th) anniversary of the effective date of this Declaration, whereupon this Declaration shall expire automatically; however, the provisions of this Declaration may be renewed and extended in accordance with any provisions of law which would permit extension hereof. Notwithstanding the foregoing, the easements granted in Article 10 hereof are and shall be perpetual, except that dedication to and acceptance by an appropriate Governmental Authority or conveyance or grant to an appropriate public utility of the facilities that are the subject of any such easements shall terminate those easements if such dedication, conveyance, or grant so provides.

**9.2 Amendment.** This Declaration may be amended and any Property subject hereto may be withdrawn from time to time by an instrument in writing, executed by members of the Owners Association holding not less than fifty-five percent (55%) of the votes in the Owners Association and placed of record in the real property records of Hall County, Georgia, and any other county in which at the time of recordation any real property subject to this Declaration is located. Amendments made pursuant to the provisions of this Section 9.2 shall inure to the benefit of and be binding upon all real property and interests therein that are part of TANNERS CREEK. Solely for the purpose of amending this Declaration or withdrawing any Property therefrom in accordance with this

Section 9.2 and in addition to the votes allocated to Grantor in accordance with paragraph 7.4.1 hereof, Grantor shall be entitled to exercise the voting rights otherwise allocable to any Building Site or other Property owned by an Affiliate of Grantor (or any Person comprising Grantor). As used in this Section 9.2, the term "Affiliate of Grantor" shall mean (i) any of the stockholders of Grantor (or any Person comprising Grantor) or (ii) any Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with Grantor (or any Person comprising Grantor). The term "control" (including the terms "controlled by" and "under common control with") means the beneficial ownership of more than fifty percent (50%) of the common stock of a corporation or unit of interest entitled to elect the majority of the board of directors or other governing body of the entity, or if a general partnership, the right to appoint or be appointed the managing partner, or if a limited partnership, the right to be a general partner. Notwithstanding the foregoing, no amendment of this Declaration which imposes a greater restriction on the use or development of any part of TANNERS CREEK will be enforced unless agreed to in writing by the owner of such affected property at the time such amendment is made.

9.3 **Binding Effect.** Each Purchaser or Grantee of any interest in any real property now or hereafter made subject to this Declaration, by acceptance of a deed or other conveyance thereof, thereby agrees that the conditions, covenants, restrictions, easements, and reservations of this Declaration may be amended, terminated, withdrawn or extended as provided herein.

9.4 **Effective Date of Declaration.** The effective date of this Declaration shall be the date of its filing for record in the real property records of the Clerk of the Superior Court of Hall County, Georgia.

#### ARTICLE 10 - EASEMENTS

10.1 **General Easements.** Grantor, for itself, its successors and assigns, hereby reserves nonexclusive perpetual easements for the installation, use, and maintenance of (i) underground utilities, supply and transmission lines, (ii) drainage facilities, and (iii) pedestrian walkways, on, over, across, and through (a) all areas designated as "Landscaping Buffers", "Landscaping Strips" or "Building Setback Areas" on any present or future recorded plat of TANNERS CREEK, or any portion thereof, (b) all portions of a Building Site lying within thirty (30) feet of any boundary line of a Building Site which abuts a publicly dedicated street or road or a street or road constructed by Grantor to be dedicated or within ten (10) feet of any other boundary line of such Building Site, and (c) all other parts of TANNERS CREEK, excepting only areas within Building Sites on which buildings are located or areas within Building Sites for which plans and specifications for any building have been Approved by the DCC. However, the location and use of any easement reserved pursuant to clause (c) of the preceding sentence, other than customary utilities, e.g., water, electric, natural gas, sanitary sewer, telephone and cable television lines, serving TANNERS CREEK, shall be subject to Approval by the Owner of the Building Site in question.

10.2 **Pedestrian Easement.** Grantor hereby reserves for its own benefit and for the benefit of each and every Owner and Occupant and their respective lessees, successors, assigns, customers, employees, and invitees, a nonexclusive, perpetual easement, right, and privilege of pedestrian passage and use, on, over, and across all pedestrian walkways or jogging trails lying within twenty-five (25) feet of any boundary line of a Building Site which abuts a publicly dedicated street or road or a street or road constructed by Grantor to be dedicated, or within thirty-five (35) feet of the mean high water line of any lake or pond, now existing or hereafter constructed within TANNERS CREEK.

10.3 **Utility Easement.** Grantor hereby reserves for its own benefit and for the benefit of each and every Owner and Occupant and their respective lessees, successors, assigns, customers, employees, and invitees, a nonexclusive, perpetual easement, right, and privilege to construct, install, operate, maintain, repair, and replace

utility lines and other facilities (including without limitation, water, gas, electric, cablevision, fiber optic, telephone and sanitary and storm drainage sewer lines and facilities) over, across, through, and under the Utility Easement Area of each Building Site.

**10.4 Lakes and Ponds.** Grantor hereby reserves easements for the purposes of using, maintaining, and repairing all lakes and ponds and all facilities connected therewith, including, but not limited to, any spillways, dams, and other drainage facilities.

**10.5 Access.** All easements reserved and established in this Article 10 shall include the right of ingress and egress, provided that any damage to a Building Site or Improvements resulting from the installation, repair or maintenance of underground utilities, supply and transmission lines, or drainage facilities shall be promptly repaired or replaced at the expense of the Grantor or authority which directed the activities causing the damage.

**10.6 Dedication and Transfer of Easements for Utilities and Roadways.** Grantor shall have the right and power (i) to convey or dedicate all or any part of any of the easements reserved and established by this Declaration, to public use and benefit, (ii) to grant easements over, under and across any of the roads, streets and drives developed, constructed and installed by Grantor (or any Person comprising Grantor) for access, ingress and egress to and from any portion of TANNERS CREEK, (iii) to grant easements on, in, under, over, through and across any of the roads, streets and drives developed, constructed and installed by Grantor (or any Person comprising Grantor) for the purpose of installing, replacing, repairing, maintaining and using master television antenna systems, security and similar systems, and all utilities, including, but not limited to, storm sewers and electrical, cablevision, fiber optic, gas, telephone, water and sanitary sewer lines, and (iv) to permit any Governmental. Authority or utility to exercise any of the rights and easements reserved and established in this Declaration.

**10.7 Internal Roads Within Building Sites.** Except for the roads and streets (herein referred to as the "Collector Roads") to be installed by Grantor and depicted on the Land Use Plan, each Owner shall, with the approval of the DCC, construct, install, provide and maintain, at its own cost and expense, all roads, streets, driveways necessary for internal access, ingress and egress within such Building Site and to connect such Building Site (and all parts thereof) to the Collector Roads; *provided, however,* such roads, streets and driveways shall be designed, constructed, installed and maintained in accordance with the requirements of this Declaration.

**10.8 Installation, Maintenance and Repair.** Grantor, the Owners Association, each and every Owner and any other Person exercising their respective rights under the easements granted. reserved and created in this Article 10 agree to, with and for the benefit of Grantor, the DCC, the Owners Association and the other Owners that any and all construction, installation, repair, replacement, relocation and maintenance of any such streets, roads, driveways, walkways, sidewalks, trails, paths, connections, utility lines, signs and other facilities (i) shall be done by, and at the sole cost and expense of, the Person so exercising its rights under this Article 10, (ii) shall be done only upon notice to the Owner whose Building Site is so affected, and (iii) shall be done in a manner so as to minimize, to the extent reasonably possible, any interruption and interference to the Owners in the normal operation of their properties and the Improvements thereon. Promptly after the completion of such construction, installation, repair, replacement, relocation and maintenance of any such streets, roads, driveways, walkways, sidewalks, trails, paths, connections, utility lines, signs and other facilities, the Building Site on, over, under or through which such work was done, shall be restored to its condition immediately prior to work (to the extent reasonably practicable), and left in a clean and good condition, with all debris removed therefrom, with trenches and cuts properly filled, with any plants, shrubbery or other landscaping which may have been disturbed by such work restored to their former condition and with all area within which dirt has been exposed, reseeded.

**10.9 Limitation of Easements.** Notwithstanding anything to the contrary contained in this Article 10, Grantor and the Owner of a Building Site shall have the right and power at any time and from time to time to enter into an agreement with respect to that Owner's Building Site which limits the easements reserved in this Article 10.

**10.10 Drainage Easements.** Grantor, for the benefit of itself, its successors and assigns, and each Owner and Occupant, hereby reserves, grants and establishes a non-exclusive perpetual easement on, over, across and through the common drainage facilities that exist from time to time within TANNERS CREEK, including, without limitation, pipes, lakes, lines, natural courses, detention ponds, detention areas and retention areas, for the drainage through such drainage facilities of historical storm and surface water runoff and increases in storm and surface water runoff resulting from development of a Building Site in compliance with this Declaration. The DCC shall not Approve any plans under Section 6.4 that would, in the opinion of the DCC, overburden the common drainage facilities. Each Owner, at its sole cost and expense, shall maintain and repair that portion of any such drainage facilities existing on its Building Site in good repair, in sound and functional condition and in compliance with all applicable government requirements, unless such common drainage facilities shall be designated as Common Areas, in which case such common drainage facilities shall be maintained by the Owners Association. Subject to an Owner's compliance with the other provisions of this Declaration, an Owner may relocate any such common drainage facilities on its Building Site; provided, however, that (i) any such relocation of any such drainage facilities will be at the sole cost and expense of such Owner, (ii) the use of any common drainage facilities by Grantor, its successors, assigns or successors-in-title, or any Owner will not be limited or interrupted by any such relocation, and (iii) the present or future use of any such relocated drainage facilities by Grantor, its successors, assigns or successors-in-title, or any Owner or Occupant shall not be limited in volume or concentration to amounts or levels that are less than that of any such common drainage facilities existing prior to the relocation. For purposes of this Section 10.10, "common drainage facilities" means drainage facilities used by more than one (1) Owner or Occupant.

## **ARTICLE 11 - ENFORCEMENT**

**11.1 Responsibility of Grantor and Owners.** Grantor and each Owner shall be responsible for compliance with the terms, provisions, and conditions of this Declaration by its Occupants, employees, agents, independent contractors, tenants, customers, and visitors.

**11.2 Failure to Pay Assessments.** If any Assessment is not paid when due by Grantor or an Owner, Grantor and any Assessment Land and Project Area owned by Grantor or the Owner and the Building Site owned by such Owner, as the case may be, shall be subject to the Assessment provisions of Section 7.5 hereof.

**11.3 Non-monetary Violations.**

11.3.1 Violation or breach of any term, provision, or condition contained herein or of any rules or regulations promulgated pursuant hereto or in any other document promulgated pursuant hereto (other than a failure to pay when due an Assessment) shall give to each of the DCC, the Owners Association, Grantor, any Declarant, and every Owner the right to prosecute a proceeding at law or in equity against the Owner or Grantor which has violated, is attempting to violate, or is permitting (or is allowing to exist) the violation or breach on its Building Site or any other portion of TANNERS CREEK of any term, provision, or condition contained herein or in any other document promulgated pursuant hereto. The right to prosecute such proceeding shall include, without limitation, the right to bring actions to enjoin or prevent such Owner or Grantor, as the case may be, from committing such violation or breach or to cause said violation or breach to be remedied, Grantor and each Owner by acceptance of a deed to any portion of the Property thereby acknowledging that no adequate remedy exists at law to cure such violations or breaches.



11.3.2 Any action or omission whereby any term contained herein or in any other document promulgated pursuant hereto is violated in whole or in part is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or equity against an Owner or Grantor, either public or private, shall be applicable against every such action or omission and may be exercised by the DCC, the Owners Association, Grantor, any Declarant, or any Owner.

11.4 **Failure to Enforce Not a Waiver.** The failure of the DCC, the Owners Association, Grantor, any Declarant, or any Owner to enforce any provision herein contained shall in no event be deemed to be a waiver of the right to do so, nor of the right to enforce any other restriction. Except as otherwise provided in Sections 3.12 and 7.12 and in paragraphs 11.6.3, 11.6.4 and 11.6.5 hereof, no suit shall lie against the DCC, the Owners Association, Grantor, any Declarant or any Owner for any failure, refusal, or omission to institute or join in any action or proceeding for the enforcement hereof or to restrain the violation of any of the provisions hereof.

11.5 **Inspection.** The DCC, the Owners Association, Grantor, and their authorized representatives may from time to time at any reasonable hour or hours, enter and inspect any Building or Building Site to ascertain compliance with this Declaration and any other documents promulgated pursuant hereto.

#### 11.6 **Right to Enter and Cure**

11.6.1 Violation or breach of any covenant contained herein or in any other document promulgated pursuant hereto shall give the DCC, the Owners Association, or Grantor the right, after notice of such violation or breach and a reasonable opportunity to cure the same have been given to the Owner of any Building Site as to which a breach or violation exists (or without notice if the DCC, in its sole discretion, determines that such violation or breach has resulted in an emergency situation), to enter upon said Building Site and summarily abate and remove, at the expense of the Owner or Occupant thereof, any structure, thing, or condition that may be or exist thereon contrary to the intent and meaning of the provisions hereof or any documents promulgated pursuant hereto, or to do anything that should have been done by an Owner hereunder or under any other document promulgated pursuant hereto.

11.6.2 By owning, purchasing or leasing property subject to this Declaration, Grantor, each Owner and each Occupant binds itself, its successors and assigns, to pay to the DCC or the Owners Association, as the case may be, the actual cost to cure any violation hereunder, together with liquidated damages of ten (10%) percent of such cost, which damages are, when collected, to be allocated by the DCC or the Owners Association, as the case may be, toward defraying the cost of enforcing this provision. In addition, the amounts so expended by the DCC or the Owners Association in accordance with this paragraph 11.6.2 shall be Assessments against the Building Site on which the violation occurred.

11.6.3 Should the DCC, the Owners Association or Grantor fail to perform any duty or duties which, under this Declaration are to be performed by it, any Owner who is aggrieved by such failure shall have the right as hereinafter provided to perform any of such duties. Any such Owner which proposes to move under this paragraph 11.6.3 shall first notify the DCC, the Owners Association and Grantor in writing of such failure to perform, and the DCC, the Owners Association or Grantor shall then have ten (10) days after its receipt of such notice within which to commence the cure thereof. In no event, however, except as otherwise provided in Sections 3.12 and 7.10 hereof, shall any member or members of the DCC, any member or members of the Board of Directors, the Owners Association or Grantor have any liability to any Owner for any failure to perform any such duty or duties. If the DCC, the Owners Association or Grantor does not so commence the cure thereof within such ten (10) day period or if so commenced does not thereafter diligently prosecute such cure to completion, then such Owner may perform such duty or duties on behalf of the DCC, the Owners Association or Grantor, as the case may be, and the actual reasonable costs and

expenses incurred by such Owner to cure any such failure to perform shall be a Common Area Cost of the Owners Association and shall be due and payable by the Owners Association to such Owner within ten (10) days after demand for payment thereof.

11.6.4 Any director of the Owners Association or an Owner, as a member of the Owners Association, may bring a derivative proceeding in the right of the Owners Association in accordance with and as permitted by the Georgia Non-profit Corporation Code.

11.6.5 An Owner may file suit against the DCC, the Owners Association or Grantor in the event any of such Persons has failed to perform any duty or duties which, under this Declaration, are to be performed by such Person, seeking such equitable relief as may be available, including, but not limited to, a mandatory injunction directing such Person to perform such duty or duties as required by this Declaration. Any Owner which proposes to move under this paragraph 11.6.5 shall first notify the DCC, the Owners Association and Grantor in writing of such failure to perform, and the DCC, the Owners Association or Grantor shall then have ten (10) days after its receipt of such notice within which to commence the cure thereof. The foregoing authority to file suit shall not limit any other right or remedy an Owner might have under this Declaration or otherwise. At the time of filing such suit, the Owner must be an Owner and a member of the Owners Association and must have been an Owner and a member of the Owners Association at the time of the matter of which such Owner complains. If the suit is successful, in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorneys' fees.

11.7 **Attorney's Fees.** Every Owner or Occupant shall be obligated to pay the actual attorney's fees (which shall be reasonable in amount) of the Person bringing an action against such Owner or Occupant for the enforcement of the provisions of this Declaration, provided such Person bringing said action has obtained a judgment in its favor by a court of record and such judgment has become final and non-appealable.

11.8 **Assessments.** All sums expended by the DCC, the Owners Association, or Grantor in enforcing this Declaration, including, without limitation, sums expended pursuant to paragraph 11.6.2 hereof, shall be immediately due and payable by the Owner in violation and shall be Assessments against such Owner.

11.9 **Payment Certificates.** The Owners Association shall, upon request at any time from an Owner or the holder of a first in priority Mortgage in a Building Site, furnish such requesting Person a written certificate in recordable form stating the amount of Assessments for which an Owner is liable and whether such Assessments have been paid in full. Such a certificate shall be conclusive evidence, against all Persons except the Owner of the Building Site in question, of the payment of any Assessment therein stated to have been paid in full.

11.10 **Remedies Cumulative.** The remedies provided herein shall be in addition to and not in substitution for any rights and remedies now or hereafter existing at law or in equity. The remedies provided herein or otherwise available shall be cumulative and may be exercised concurrently. The failure to exercise any one of the remedies provided herein shall not constitute a waiver thereof, nor shall use of any of the remedies provided herein prevent the subsequent or concurrent resort to any other remedy or remedies. Grantor and each Owner acknowledge and agree that damages or other legal remedies may be inadequate and specific performance shall be required in the absence of an adequate legal remedy.

11.11 **Nuisance.** Every violation of this Declaration or any part thereof is hereby declared to constitute a nuisance, and every public or private remedy allowed therefor by law or in equity against an Owner or Occupant shall be applicable against such violation and may be exercised by Grantor, the DCC, the Owners Association or any Owner.

11.12 **Enforcement by Occupant.** Grantor may, in its sole and absolute discretion grant to an Occupant the right to enforce the provisions herein contained pursuant to the terms hereof. In order to be effective, an Occupant's right of enforcement shall be contained in a written agreement between Grantor and Occupant and Occupant's right of enforcement shall expire at such time as Occupant is no longer an Occupant.

## ARTICLE 12 - MISCELLANEOUS

12.1 **Governing Law.** This Declaration concerns real property located in the State of Georgia and shall be governed by and interpreted in accordance with the laws of the State of Georgia. The venue for any action or suit brought against any Owner relating to this Declaration or the enforcement of any provisions hereof shall be Hall County, Georgia.

12.2 **Severability.** Invalidation of any one or more of the provisions of this Declaration by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

12.3 **Conflicts.** The Zoning Conditions, applicable building and inspection codes and regulations, and any and all other Requirements of Governmental Authorities shall be observed. In the event of any conflict between this Declaration and any such Requirements of Governmental Authorities, the provisions which require more restrictive standards shall apply.

12.4 **No Reverter.** No covenant or restriction set forth in this Declaration is intended to be or shall be construed as a condition subsequent, a conditional limitation, or as creating a possibility of reverter.

12.5 **Grants and Agreements.** The grants, reservations; creation and establishment of the easements, rights and privileges in this Declaration are independent of any contractual agreements or undertakings hereunder and a breach by Grantor, Owner or Occupant of such contractual agreements or undertakings shall not cause a forfeiture, termination or reversion of the easements, rights and privileges created by this Declaration.

12.6 **Interpretations.** 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 purpose set forth in Article 2 hereof. No provision of this Declaration shall be construed against or interpreted to the disadvantage of any Owner, including, without limitation, Grantor, by any court or other Governmental Authority by reason of such Owner's having or being deemed to have structured or dictated such provision.

12.7 **Captions.** The captions of each Article, Section and paragraph hereof 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, Section or paragraph to which they refer.

12.8 **Gender and Grammar.** The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

12.9 **Rights of First Mortgagees.** Each first Mortgagee shall (a) be entitled to written notice from the Owners Association of any default by an Owner in the performance of its obligations under this Declaration or the rules and regulations of the Owners Association which is not cured within sixty (60) days, (b) be entitled to receive notice of and to designate a representative to attend and observe all meetings of the members of the Owners

Association, but not meetings of the Board of Directors or the DCC, and (c) be furnished copies of annual financial reports made to the Owners within 120 days after the end of each Fiscal Year; *provided, however*, that each such first Mortgagee shall have first filed with the Owners Association a written request that notices of default, notices of meetings and copies of financial reports be sent to a named agent or representative of such Mortgagee at an address stated in such notice.

12.10 **Time of Essence.** Time is of the essence of this Declaration and every provision hereof.

12.11 **Reasonableness Standard.** Notwithstanding anything contained herein to the contrary, Grantor (or any Person or Persons comprising Grantor), Declarant, the Appointing Authority, the Owners Association, the Board of Directors, the DCC, any Occupant or any Owner shall act in good faith and in a reasonable manner hereunder and shall act, in all respects, in a reasonably timely manner given the specific factual situation involved. In acting in good faith and in a reasonable manner, the Grantor (or any Person comprising the Grantor), the DCC, the Owners Association and the Board of Directors shall be entitled, where appropriate, with respect to a particular Building Site, to refer to existing Property Uses and Improvements located on other Building Sites in the vicinity of the Building Site in question.

12.12 **Notices.**

12.12.1 Any notice or other communication required or permitted to be given, sent, delivered or furnished to any Person under this Declaration shall be deemed to have been received by the addressee thereof when (i) delivered in person (including delivery by messenger, courier or other delivery service) to the address of such Person or (ii) mailed, with the proper postage affixed, by certified mail, return receipt requested, to the last known address of the Person who appears as an Owner in the public records of Hall County, Georgia. Such notice, if mailed, shall be deemed received three (3) business day after the date of deposit in the United States mail, unless earlier received by the addressee. Notice to one or more co-Owners of a Building Site shall constitute notice to all co-owners.

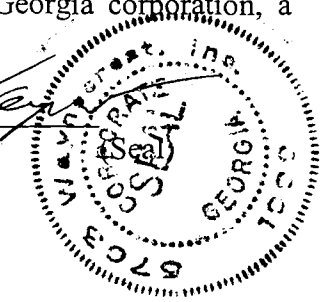
12.12.2 A copy of any notice of default or delinquency hereunder given by the DCC or the Owners Association to an Owner, shall be sent to a Mortgagee of such Owner contemporaneously with the delivery of such notice or demand to such Owner; provided, however, that (i) the DCC or the Owners Association shall only be obligated to provide such notice to such Mortgagee from and after the date the DCC or the Owners Association receive such written request, and (ii) no failure by the DCC or the Owners Association to provide a copy of any such notice to any Mortgagee shall compromise or affect any rights or remedies of the DCC or the Owners Association hereunder with respect to such Owner, but such failure of the DCC or the Owners Association to provide a copy of such notice to any Mortgagee shall prevent the exercise of any rights or remedies of the DCC or the Owners Association pursuant to such notice with respect to such Mortgagee.

IN WITNESS WHEREOF, Tanners Creek Development, L.L.C. has executed and delivered this Declaration under seal the date first above written.

Signed, sealed and delivered in the presence of: TANNERS CREEK DEVELOPMENT, L.L.C.  
A Georgia Limited Liability Company

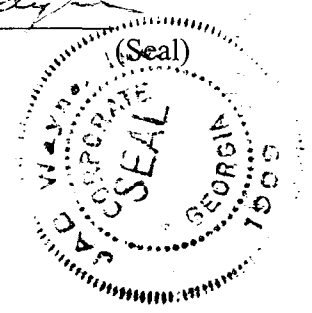
By: 5763 Wayne Crest, Inc., a Georgia corporation, a Manager

By: *Alan A. Wayne*  
Name: Alan A. Wayne  
Title: President/Secretary



By: JAB Wayne, Inc., a Georgia corporation, a Manager

By: *Mike Wayne*  
Name: Mike Wayne  
Title: President/Secretary



Witness: *[Signature]*

Notary Public: *[Signature]*  
10-11-01

My Commission Expires



EXHIBIT "A"

All that tract or parcel of land lying and being in Land Lot 69, 8<sup>th</sup> Land District, Hall County, Georgia, begin 18.032 acres, shown as Tract No. 1 on a survey for Alan Wayne and Mike Wayne, dated July 16, 1997, prepared by Henry Bailey, Georgia Registered Land Surveyor, said plat being recorded in Plat Slide 627, page 108-A of the Hall County, Georgia Plat Records. Said plat and the record thereof are incorporated herein by reference for a more complete and accurate description of said property.

LESS AND EXCEPT:

That portion of the above described property conveyed to Hall County, Georgia for re-alignment and widening of Thurmon Tanner Road.