

STATE OF GEORGIA

COUNTY OF COBB

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND

EASEMENTS FOR TAMARACK FALLS SUBDIVISION

THIS DECLARATION, made this 17th day of September, 1999, by T.H.D., Inc.
(hereinafter referred to as "Developer").

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

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

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

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

ARTICLE 1

DEFINITIONS

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Section 1. " **ARCHITECTURAL REVIEW COMMITTEE**" shall mean and refer to T.H.D. Inc., or such other individuals as Developer may appoint, until all lots in TAMARACK FALLS SUBDIVISION shall have been fully developed and permanent improvements constructed thereon and sold to permanent residents, at which time such term shall mean and refer to those persons selected annually by the owners in compliance with the Bylaws of the Association to serve as members of said committee.

Section 2. " Association " shall mean and refer to Tamarack Falls Homeowner's Association, Inc., its successors and assigns.

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

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

Section 5. " Common Expenses " shall mean and refer to the actual and estimated expenses of operation the Association, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to Declaration and the Bylaws and Articles of incorporation of the Association.

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

Section 7. " Developer" shall mean and refer to T. H. D. Inc., of the State of Georgia or any successor-in-title or any successor-in-interest to T.H.D. Inc.,-to all or any portion of the property, provided in the instrument of conveyance to any such successor-in-title or interest, such successor-in-title or interest is expressly designated as the " Developer" hereunder by the grantor of such conveyance, which grantor shall be the Developer hereunder at the time of such conveyance.

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

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

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

Section 11. " Plat " shall mean and refer to that certain Final Subdivision Plat for TAMARACK FALLS SUBDIVISION.

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

Section 13. " Structure " shall mean and refer to : (I) any thing or object, the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration and not limitation, any dwelling, building or part thereof; garage, porch, gazebo, shed, greenhouse or bathhouse, coop or cage, covered or uncovered patio, swimming pool, tennis court, fence, curbing, paving, wall, sign, signboard, mailbox, driveway, temporary or permanent living quarters (including any house trailer), or any other temporary or permanent improvement to such Lot; (II) any excavation, grading, fill ditch, diversion dam or other thing, object or device which affects or alters the natural flow of surface waters from, upon or across any Lot; which affects or alters the flow of any waters in any natural or artificial creek, stream, wash or drainage channel from, upon or across any Lot; and (III) any change in grade at any point of a Lot of more than sixty (60) inches, whether or not subsection (II) of this Section 13 applies to such change.

ARTICLE II

ARCHITECTURAL REVIEW COMMITTEE

Section 1.

Purpose, Powers, and Duties of the ARCHITECTURAL REVIEW COMMITTEE.

The purpose of the **ARCHITECTURAL REVIEW COMMITTEE** is to assure that the installation, construction or alteration of any Structure on any Lot is submitted to the **ARCHITECTURAL REVIEW COMMITTEE** for approval (I) as to whether the proposed installation, construction or alteration is in conformity and harmony of external design and general quality with the existing standards of the development of the Property; and (II) as to the location of Structures with respect to topography, finished ground elevation and surrounding Structures.

To the extent necessary to carry out such purpose, the **ARCHITECTURAL REVIEW COMMITTEE** shall have all of the powers and duties to do each and every thing necessary, suitable, convenient or proper for, or in connection with or incidental to, the accomplishment of such purpose, including, without being limited to , the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any Structure on any Lot.

Section 2.

Action of Members of **ARCHITECTURAL REVIEW COMMITTEE**.

Any member Of the **ARCHITECTURAL REVIEW COMMITTEE** may be authorized by the **ARCHITECTURAL REVIEW COMMITTEE** to exercise the full authority of the **ARCHITECTURAL REVIEW COMMITTEE** with respect to all matters over which the **ARCHITECTURAL REVIEW COMMITTEE** has authority as may be specified by resolution of the **ARCHITECTURAL REVIEW COMMITTEE**. The action of such member with respect to the matters specified shall be final and binding upon the **ARCHITECTURAL REVIEW COMMITTEE** and upon any applicant for any approval permit or authorization, subject, however, to review any motion or appeal by the applicant to the **ARCHITECTURAL REVIEW COMMITTEE** as provided herein, Written notice of the decision of such member with respect to the matters specified shall be provided to the **ARCHITECTURAL REVIEW COMMITTEE** and any applicant for an approval permit or authorization. The applicant may, upon notice of the decision which he deems to be unsatisfactory, file a written request to have the matter in question reviewed by the **ARCHITECTURAL REVIEW COMMITTEE**. Upon the filing of such request, the matter with respect to which such request was filed shall be submitted to, and reviewed promptly by, the **ARCHITECTURAL REVIEW COMMITTEE**, but in no event later than thirty (30) days after the filing of such request. The decision a majority of the members of the **ARCHITECTURAL REVIEW COMMITTEE** with respect to such matter shall be final and binding.

Section 3.

Submission of Plans and Specifications.

No Structure shall be commenced, erected, placed, moved onto or permitted to remain on any Lot,. nor shall any existing Structure upon any Lot be altered in any way which materially changes the exterior appearance of the Structure or Lot, unless three copies of the plans and specifications therefore shall have been first submitted to and approved in writing by the **ARCHITECTURAL REVIEW COMMITTEE**. One copy shall be returned and one retained by the **ARCHITECTURAL REVIEW COMMITTEE** until such time as such changes or improvements are completed; and one copy along with approved plans and specifications shall be delivered to the marketing agent. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the **ARCHITECTURAL REVIEW COMMITTEE**, including, without being limited to

(a) a site plan showing the location of all proposed and existing structures on the Lot, including building setbacks, open space, driveways and parking spaces, including the number thereof.

(b) floor plans;

(c) exterior elevations of all proposed Structures and alterations to existing structures, as such structures will appear after all back-filling and landscaping are completed;

(d) specifications showing the nature, kind, shape, height, materials, basic exterior finished and colors of all proposed Structures and alterations to existing Structures, and also showing front, side, and rear elevations thereof, and

(e) Plans for landscaping and grading

Section 4.

Approval of Builders.

The **ARCHITECTURAL REVIEW COMMITTEE** reserves the right to approve any builder or landscaper, prior to performing any work on any. Lot in the Property as to financial stability, building or landscaping experience and ability to build or landscape structures or grounds of the class and type of those which are to be built on the Property. Such approval may be granted or withheld in the sole and uncontrolled discretion of the **ARCHITECTURAL REVIEW COMMITTEE**. The **ARCHITECTURAL REVIEW COMMITTEE** reserves the right to withhold approval of any Person as a builder or landscaper unless such Person obtains his income primarily from construction or landscaping of the type which builder or landscaper is to perform upon the Property. The **ARCHITECTURAL REVIEW COMMITTEE** reserves the right to prohibit any Owner from acting as his own builder, contractor or landscaper except where such Owner otherwise meets the qualifications for approval by the **ARCHITECTURAL REVIEW COMMITTEE** as herein above set forth.

Section 5.

Approval and Disapproval of Plans and Specifications

(a) The **ARCHITECTURAL REVIEW COMMITTEE** shall have the right to approve or disapprove any plans and specifications submitted to it in its sole and uncontrolled discretion, which approval or disapproval may be based upon any grounds, including purely aesthetic considerations which shall be deemed sufficient.

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

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

Section 6.

Obligation to Act.

The **ARCHITECTURAL REVIEW COMMITTEE** shall take action on any plans and specifications submitted as herein provided within forty-five (45) days after receipt thereof Approval by the **ARCHITECTURAL REVIEW COMMITTEE**, if granted, together with any conditions imposed by the **ARCHITECTURAL REVIEW COMMITTEE**, shall be placed in writing on the plans and specifications and shall be returned to the applicant. Failure by the **ARCHITECTURAL REVIEW COMMITTEE** to take action within forty-five (45) days of the receipt of plans and specifications submitted for approval shall be deemed approval of such plans and specifications provided, however, after the expiration of said forty-five (45) day period, applicant shall first provide a written demand upon the **ARCHITECTURAL REVIEW COMMITTEE** for action allowing the **ARCHITECTURAL REVIEW COMMITTEE** not less than twenty (20) days following receipt thereof in order to take such action.

Section 7.

Right of inspection.

The **ARCHITECTURAL REVIEW COMMITTEE**, its agents and representatives, shall have the right during reasonable hours to enter upon and inspect any Lot or Structures thereon for the purpose of ascertaining whether the installation, construction, alteration or maintenance of any Structure or the use of any Lot or Structure is in compliance with the provisions of the Declaration; and the **ARCHITECTURAL REVIEW COMMITTEE** shall not be deemed to have committed a trespass or other wrongful act solely by reason of such entry or inspection.

Section 8. Violations.

(a) If any Structure shall be erected, placed, maintained or altered upon any Lot, otherwise than in accordance with the laws and specifications approved by the **ARCHITECTURAL REVIEW COMMITTEE** pursuant to the provisions of this Article, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If in the opinion of the **ARCHITECTURAL REVIEW COMMITTEE** such violation shall have occurred, the **ARCHITECTURAL REVIEW COMMITTEE** shall be entitled and empowered to enjoin or remove any such construction. Any costs and expenses incurred by the **ARCHITECTURAL REVIEW COMMITTEE** in enjoining and/or removing any construction or improvements shall be added to and become a part of the assessment to which the Owner and his Lot are subject, the Owner hereby indemnifies and holds harmless the **ARCHITECTURAL REVIEW COMMITTEE** for all damage, loss, liability, claim, cause of action, cost or expense including, without limitation, all attorney's fees and court costs arising in any way in connection with the **ARCHITECTURAL REVIEW COMMITTEE'S** enforcement of this Article.

(b) The **ARCHITECTURAL REVIEW COMMITTEE** shall provide written notice to the Owner, setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation. If the Owner shall not have taken reasonable steps toward the required remedial action within twenty (20) days after the mailing of the aforesaid notice of violation, then the **ARCHITECTURAL REVIEW COMMITTEE** shall have the right of abatement as provided in Section 1. (b) Of Article X hereof In addition to the right of abatement, the Board, upon being informed of such violation by the **ARCHITECTURAL REVIEW COMMITTEE**, shall be entitled to seek equitable relief to enjoin such construction.

Section 9. Fees.

The **ARCHITECTURAL REVIEW COMMITTEE** may impose and collect a reasonable and appropriate fee to cover the cost of inspections performed pursuant to Section 8 hereof. The fee shall be established from time to time by **ARCHITECTURAL REVIEW COMMITTEE**.

ARTICLE III

MEMBERSHIP VOTING RIGHTS

Section 1.

Membership.

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

Section 2.

Voting Rights.

The Association shall have two (2) classes of voting membership:

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

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

(a) When the total votes outstanding in the Class A membership exceed the total votes outstanding in the Class B membership; or

(b) When in its discretion, the Developer so determines.

Section 3.

Developer's Power to Appoint and Remove Board Members and Officers.

Notwithstanding the provisions of Section 2 of this Article III, The Developer shall be a member of the Board and be authorized to appoint and remove any member or members of the Board and any Officer of the Association as long as the Developer owns one Lot that is intended for sale. The Developer's

authority to appoint and remove members of the Board and Officers of the Association shall in no event extend beyond and shall in all cases expire immediately upon the occurrence of any of the following:

- (1) Five (5) years after the recording of this Declaration;
- (2) The expiration of eight (8) years after the recording of this Declaration in the case of the Developer having an unexpired option to add additional property; or
- (3) The surrender by the Developer of the authority to appoint and remove members of the Board and Officers of the Association by an express amendment to this Declaration.

ARTICLE IV

Property Rights

Section 1.

Member's Easement of Enjoyment.

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

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

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

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

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

(e) the right of the Association, in the event of dissolution of the Association, to transfer all or any part of the Common Area to a public agency or to a nonprofit organization with similar purposes.

Section 2.

Title to Common Area.

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

Section 3. No

Partition.

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

ARTICLE V

Covenant for Maintenance and Capital Improvement Assessments

Section 1.

Creation of the Lien and Personal Obligation of Assessments.

Each Owner of a Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association:

(1) Annual assessments which may or shall be levied by the Association, and

(2) Special assessments, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest thereon, and costs of collection thereof; as hereinafter provided, including reasonable attorney's fees, shall be a charge and a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest thereof and costs of collection thereof; including reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall be joint and several with any successors-in-title with or without notice.

Section 2.

Purpose of Assessments.

The assessments levied by the Association shall be used exclusively for promoting the health, safety, pleasure and welfare of the Owners of the Lots and the costs and expenses incident to the operation of the Association, including, without limitation, the maintenance and repair of the Common Area and improvements thereof if any, the maintenance of services furnished by the Association, the purchase of insurance by the Association, the repair and replacement of improvements on the Common Area, payment of all taxes, insurance premiums and all costs and expenses incidental to the operation and administration of the Association, and establishment and maintenance of a reasonable reserve fund or funds.

Section 3.

Computation of Annual Assessments.

If the Association incurs ongoing Common Expenses, it shall be the duty of the Board at least thirty (30) days prior to the Associations annual meeting to prepare a budget covering the estimated Common Expenses of operating the Association of the coming year, such budget to include the Capital needs of the Association. The budget and the proposed annual assessments to levied against each Lot shall be delivered to each Owner no later than ten (10) days prior to such annual meeting. The annual assessments shall be equally divided among the Lots so that the annual assessments shall be the same for each Lot. The budget and the annual assessments shall become effective unless disapproved at the annual meeting by either;

- (1) Developer, so long as Developer owns at least one (1) Lot for sale; or
- (2) a vote of a majority of the Owners voting in person or by proxy at such meeting.

In the event the proposed budget is not approved or the Board fails for any reason to determine the budget for the succeeding year, then until a budget has been determined as provided herein, the budget for the then current year shall continue for the succeeding year if any budget at any time proves inadequate for any reason, the Board may call a meeting of the Association for the approval of a special assessment.

Section 4.

Special Assessments.

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessments applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of at least two-thirds (2/3) of the Class A Members and the Class B Member, if any, voting in person or by proxy at a meeting duly called for such purpose. Special assessments may also be levied by the Association, if, for any reason, the annual assessments prove inadequate to defray the expenses of the Association in fulfilling its duties and obligations hereunder, subject to the consent of the members as set forth above.

Section 5.

Notice and Quorum for any action authorized under Sections 3 and 4.

Written notice of any meeting called for the purpose of taking action authorized under Sections 3 or 4 above shall be sent to all members not less than ten (10) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty percent (50 %) of all the votes of each class membership shall constitute a quorum.

Section 6.

Rate of Assessment.

Annual and Special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7.

Date of Commencement of Annual Assessments; Due Dates.

The annual assessments provided for herein shall be paid in such a manner and on such dates as may be fixed by the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an Officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the

Association as to the status of assessments on a specified Lot is binding upon the Association as of the date of its issuance.

Section 8.

Effect of Nonpayment of Assessments; Remedies of the Association.

Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after due date, the assessment shall bear interest from the date of delinquency at the maximum legal rate per annum. In such case, the Association may accelerate, at its option, the entire unpaid balance of the assessment and may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against such Owner's Lot, and interest, costs and reasonable attorney's fees, if any, shall be added to the amount of such assessment. Each such Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association, or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of liens against real property, including foreclosure by an action

brought in the name of the Association in a like manner as a mortgage foreclosure on real property, and, such Owner hereby expressly grants to the Association a power of sale in connection with the foreclosure of said lien. The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all other Owners. The Association acting on behalf of the Owners, shall have the power to bid for the interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area, abandonment of his Lot or by renunciation of membership in the Association. An Owner may give to the Association, nevertheless, subject to acceptance thereof by the Association, a deed in lieu of foreclosure.

Section 9. Exempt

Property.

The following property, subject to the Declaration, shall be exempted from the assessments, charges and liens created herein;

- . (a) All properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use;
- (b) All common Area; and
- (c) All properties exempted from taxation by state or local governments upon the terms and to the extent of such legal exemption. Notwithstanding any provisions

herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

Section 10.

Effect of Foreclosure by Mortgagee.

Notwithstanding any provision herein contained to the contrary, the lien of any assessment provided for in this Declaration shall be and is subordinate to the lien of any first mortgage. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof

ARTICLE VI

Maintenance

Section 1.

Association's Responsibility.

Except as otherwise provided for herein, the Association shall maintain and keep in good repair all portions of the Common Area and improvements thereon, if any. The Association's responsibility with respect to the Common Area shall be deemed to include the maintenance, repair and replacement of;

- (1) all roads, driveways, walks, parking areas and buildings and other improvements, if any, situated within the Common Area;
- (2) Such utility lines, pipes, plumbing, wires, conduits and systems which are a part of the Common Area; and
- (3) All lawns, trees, shrubs, hedges, grass and other landscaping situated within or upon the Common Area.

Section 2.

Owner's Responsibilities.

Each Owner of a Lot, whether vacant or occupied, shall keep and maintain his Lot and the exterior of any and all improvements located thereon in a neat, attractive and safe condition. Such maintenance shall include, but shall not be limited to, painting, repairing, replacing and care for roofs, gutters, down spouts, building surfaces, trees, shrubs, grass, walks and other exterior

improvements. Should any Owner of a Lot fail to maintain his Lot or the improvements thereon as set forth herein above, the **ARCHITECTURAL REVIEW COMMITTEE**, its agents and representatives, may, after thirty (30) days written notice to the Owner of such Lot, enter upon his Lot for the purpose of mowing, removing, clearing, cutting, or pruning underbrush, weeds or other unsightly growth, for removing garbage or trash, or for performing such exterior maintenance as the **ARCHITECTURAL REVIEW COMMITTEE**, in the exercise of its sole discretion, deems necessary or advisable. Such Owner shall be personally liable to the **ARCHITECTURAL REVIEW COMMITTEE** for the direct and indirect cost of such maintenance, which costs shall be added to and become part of the assessment to which such Owner and his Lot are subject. Although notice given as herein provided shall be sufficient to give the **ARCHITECTURAL REVIEW COMMITTEE**, its agents and representatives, the right to enter upon such Lot and perform such maintenance, entry for such purpose shall be only between the hours of 9:00 A.M. and 5:00 P.M. The provisions hereof shall not be construed, however, as an obligation on the part of the **ARCHITECTURAL REVIEW COMMITTEE** to mow, clear, cut or prune any Lot, to provide garbage or trash removal service, or to perform such exterior maintenance.

ARTICLE VII

(d) for the use of the Common Area and any sales offices, model units, construction trailers, advertising materials and the like, and parking spaces in connection with its efforts to market Lots;

(e) For ingress and egress over all roads and walkways including, without limitation, the right to enter the burdened property to tie into existing roadways and walkways;

(f) to place project signs at the entrance to TAMARACK FALLS SUBDIVISION or, where a different community is being constructed adjacent to TAMARACK FALLS SUBDIVISION, the right to remove a project sign and replace it with a common sign advertising both communities for the benefit of Lot Owners;

(g) For limited encroachments and overhangs in the construction of a Structure;

(h) For the maintenance of such other facilities and equipment as in the sole discretion of Developer may be reasonably required, convenient or incidental to the completion, improvements and sale of Lots..

Section 3.

Easements for Association.

There shall be a general right and easement for the benefit of the Association, its directors, officers, agents and employees, including any management company retained by the Association, to enter upon the Common Area and any Lot to perform any maintenance, evaluate

architectural changes to the exterior of Structures, or to exercise self-help with respect to covenant violations or dangerous conditions which might increase the possibility of fire, slope erosion or the occurrence of some other hazard and otherwise perform their respective duties.

ARTICLE VIII

General Covenants and Restrictions

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

Section 1.

Residential Use.

All Lots shall be restricted exclusively to single-family residential use. As used herein, the term single family, shall mean one or more persons, provided all persons occupying the Lot are interrelated by blood, adoption, or marriage. If persons occupying a Lot are not all interrelated by blood, adoption, or marriage, then the occupancy of that Lot shall be limited to a maximum number of persons equal to the number of bedrooms in the Structure on that Lot, but not to exceed three (3) persons; provided, however, that persons occupying a Lot who are interrelated by blood, adoption, or marriage may occupy that Lot with one person not related by blood, adoption or marriage. The words; by blood, shall be deemed to encompass only children, grandchildren, grandparents, brothers, sisters, nieces, parents, aunts, uncles, and first cousins, and no other degree of kinship. Occupancy, for purposes of this Declaration, shall be defined as staying overnight in a Structure for a total of more than thirty (30) days, either consecutive or nonconsecutive, in any year. Marriage, shall include common law marriage as provided for under Georgia law. This single family occupancy restriction shall not apply to require the removal of any person occupying a Lot on the date on which this Declaration is recorded in the Cobb County, Georgia land records. However, no person not an occupant of a Lot on the date on which this Declaration is recorded in the Cobb County, Georgia land records, shall be permitted to occupy a Lot if either before or after the occupancy by such person that Lot does not or would not comply with the single family occupancy restriction set forth in this paragraph.

Not trade or business of any kind may be conducted in or from a Lot, Structure, the Common Area or any part of the Property including business uses ancillary to a primary residential use, except that the Owner or occupant residing in Structure may conduct such business activities within the unit so long as

- (1) The existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from the exterior of the unit;
- (2) The business activity does not involve persons coming onto the Property who do not reside on the Property;
- (3) The business activity conforms to all zoning requirements for the Property; and

(4) The business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use, as may be determined in the sole discretion of the Board. The terms " business " and " trade " as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether,

- 1 such activity is engaged in full or part time;
- 2 such activity is intended to or does generate a profit; or
- 3 license is required therefore.

Notwithstanding the foregoing, nothing herein shall be construed to prohibit or prevent Developer or any builder of residences in TAMARACK FALLS SUBDIVISION from using any Lot owned by Developer or such builder for the purpose of carrying on business related to the development, improvement and sale of Lots in TAMARACK FALLS SUBDIVISION.

Section 2.

Common Area.

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

Section 3. Nuisances.

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

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

(c) No automobiles, trailers, trucks, boats, motorcycles, crafts or vehicles of any type may be parked anywhere other than in the garage serving Lot Structures.

Section 4.

Resubdivision of Property.

No Lot may be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise, without the prior written approval of the **ARCHITECTURAL REVIEW COMMITTEE** of plans and specifications for such split, division or subdivision.

Section 5.

Erosion Control

Not activity which may create erosion or siltation problems shall be undertaken on any Lot without the prior written approval of the **ARCHITECTURAL REVIEW COMMITTEE** of plans and specifications for the prevention and control of such erosion or siltation. The **ARCHITECTURAL REVIEW COMMITTEE** may, as a condition of approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include (byway of example and not limitation) physical devices for controlling the run-off and drainage of water, special precautions in grading and otherwise changing the natural landscape and required landscaping as provided for in Section 6.

Section 6. Landscaping

No construction or alteration of any Structure shall take place without the prior written approval by the **ARCHITECTURAL REVIEW COMMITTEE** of plans and specifications for the landscaping to accompany such construction or alteration.

Section 7.

Temporary Buildings.

No temporary building, trailer, garage or building under construction shall be used, temporarily or permanently, as a residence on any Lot except as temporary sleeping or living quarters required or desired for security purposes in accordance with plans and specifications therefore approved by, the **ARCHITECTURAL REVIEW COMMITTEE**. No contractor or builder shall erect on any Lot any temporary building or shed for use in connection with the construction on such Lot without the prior written consent of the **ARCHITECTURAL REVIEW COMMITTEE**.

Section 8. Signs.

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

(1) Such signs as may be required by legal proceedings;

(2) not more than one " For Sale " or " For Rent " sign; provided, however, that in no event shall any such sign be larger than four (4) square feet in area; and

(3) Directional signs for vehicular or pedestrian safety in accordance with plans and specifications approved by the **ARCHITECTURAL REVIEW COMMITTEE**.

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

Section 9.

Setbacks.

In approving plans and specifications for any proposed Structure, the **ARCHITECTURAL REVIEW COMMITTEE** may establish requirements for the location of such Structures which are more restrictive than those established by the Plat. No Structure shall be erected or placed on any Lot unless its location is consistent with such setbacks.

Section 10.

Fences.

No fence or wall of any kind shall be erected, maintained, or altered on any Lot without the prior written approval of the **ARCHITECTURAL REVIEW COMMITTEE**

of plans and specifications for such fences and walls. In no event shall any fence be constructed, placed or maintained in the front yard of any Lot.

Section 11.

Roads and Driveways.

No road or driveway shall be constructed or altered on any Lot without the prior written approval of the **ARCHITECTURAL REVIEW COMMITTEE** of plans and specifications for such roads and driveways. Such specifications shall include the proposed substance to be used in constructing such roads and driveways, which substance shall be satisfactory to the **ARCHITECTURAL REVIEW COMMITTEE**.

Section 12.

Antennae.

No antenna, satellite dish or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, attached, used, or maintained on the exterior of any Structure or upon any Lot without the prior written approval of the **ARCHITECTURAL REVIEW COMMITTEE**. In no event shall freestanding transmission or receiving towers or satellite dishes be permitted. The only exception being, the small VSSB dishes will be permitted in rear of house only.

Section 13.

Clothesline.

No outside clotheslines shall be constructed, placed, maintained, or used on any Lot.

Section 14.

Recreational Vehicles and Trailers.

The **ARCHITECTURAL REVIEW COMMITTEE**, in reviewing the plans and specifications of any proposed Structure, may require that special parking areas be made available for recreational vehicles. No trailer, trailer house, boat or recreational vehicle shall be parked on any Lot, except on such parking areas as specified by the **ARCHITECTURAL REVIEW COMMITTEE** pursuant to this Section 14 or within enclosures or behind screening erected in accordance with plans and specifications submitted to and approved by the **ARCHITECTURAL REVIEW COMMITTEE**. While nothing contained herein shall

prohibit the use of portable or temporary buildings for trailers as filed offices by contractors during actual construction, the use, appearance and maintenance of such a building or trailer must be specifically approved by the **ARCHITECTURAL REVIEW COMMITTEE** prior to its being moved onto the construction site.

Section 15.

Recreation Equipment.

No recreation and playground equipment shall be placed or installed on any Lot which is visible from the street abutting such Lot without the prior written approval of the

ARCHITECTURAL REVIEW COMMITTEE.

Section 16.

Accessory Structures.

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

Section 17. Improvement of Lots.

All construction of Structures, accessory Structures and all other improvements in TAMARACK FALL SUBDIVISION shall be undertaken and completed in accordance with the following conditions:

(a) All construction shall be carried out in compliance with the laws, code rules, regulations and orders of all applicable governmental agencies and authorities.

(b) All single family residences constructed on the Lots shall be European or Traditional, in style. The determination of whether or not a residence is European or Traditional, shall be decided by the **ARCHITECTURAL REVIEW COMMITTEE** in its sole and uncontrolled discretion.

(c) All foundations when exposed must either be concrete or brick, and there shall be no fences or walls of any other material which the **ARCHITECTURAL REVIEW COMMITTEE** determines to be incompatible with dwellings or other Structures in TAMARACK FALLS SUBDIVISION.

(d) Only one mailbox shall be located on any Lot, which mailbox will be consistent with the quality and design of surrounding dwellings and mailboxes. Said mailbox shall be placed and maintained to complement the dwelling to which it is appurtenant to the extent such mailbox is permitted to be located and maintained by the United States Postal Service, its successors and assigns and acceptable to all. Each mailbox must be of approved **ARCHITECTURAL REVIEW COMMITTEE** design and construction.

(e) No lumber, bricks, stones, cinder blocks, scaffolding, mechanical devices, or any other materials or devices used for building purposes shall be stored on any Lot except for purposes of construction of a dwelling or accessory Structure on such Lot, nor shall any such building materials or devices be stored on Lot for longer than the length of time reasonably necessary for the construction in which such materials or devices are to be used.

(f) No exposed, aboveground tanks for the storage of fuel or water or any other substance shall be located on any Lot other than apparatus relating to solar energy, the location and design of which must first be approved by the **ARCHITECTURAL REVIEW COMMITTEE**

(g) Adequate off street parking shall be provided for each Lot.

(h) Containers for garbage and other refuse shall be underground or in screened sanitary enclosures; no incinerators for garbage, trash or other refuse shall be used, and a garbage disposal is required for each dwelling.

(I) All garages must have doors, and each garage door must be coordinated with the dwelling to *which it is* appurtenant.

(j) No window air conditioning unit may be located in any part of any Structure or accessory Structure which is visible from any street, and all exterior compressor units shall be ground mounted and screened by fencing or planting of a density and height to hide the unit effectively, *which* fencing or planting shall *first* be approved by the **ARCHITECTURAL REVIEW COMMITTEE**.

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

(l) No plumbing vent or heating vent shall be placed on the front side of any roof or any Structure or accessory Structure if possible.

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

(n) The enclosed, heated living area (exclusive of garages, carports, porches, terraces, bulk-storage and basement) of one story dwellings shall contain not less than 2000 square feet. The enclosed, heated living area (exclusive of garages, carports, porches, terraces, bulk-storage.. and basement) of all two story and two and one-half story dwellings shall contain not less than 2000 square feet. No dwellings shall be constructed exceeding two and one-half stories in height on any Lot.

Section 18.

Animals.

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

Section 19.

Water Supply.

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

Section 20.

Trees and shrubs.

No trees measuring 18 inches or more in diameter at a point 2 feet above ground level, no flowering trees or shrubs, nor any evergreens on any lot *may* be removed without the prior approval of the **ARCHITECTURAL REVIEW COMMITTEE** unless located within 10 feet of the approved site for a Structure or within the right of way of driveways or walkways; Excepted here from shall be damaged or dead trees and trees which must be removed due to an emergency.

ARTICLE IX

Insurance

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

ARTICLE X

General Provisions Section 1.

Enforcement.

(a) the Association, the **ARCHITECTURAL REVIEW COMMITTEE**, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, easements, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association, the **ARCHITECTURAL REVIEW COMMITTEE** or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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

(c) Any grievance, claim or controversy by an Owner against the Developer or Association or its directors, officers, or manager shall be settled by arbitration administered by the American Arbitration Association and judgment and award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof provided, however, prior to filing a demand for arbitration lawsuit Owner shall first meet with the Developer or Association, state his or her grievance, claim or controversy and in good faith give the Association an opportunity to respond.

Section 2. Severability.

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

Section 3. Headings

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

Section 4. Duration

The covenants and restrictions of this Declaration shall run with and bind the land for a period of twenty (20) years from the date this Declaration is recorded, at the end of which period such covenants and restrictions shall be automatically extended for successive periods of ten (10) years each, unless at least two-thirds (2/3) of the Owners at the time of the expiration of the initial period, or of any extension period, shall sign an instrument in which said covenants and restrictions are modified in whole or in part, which instrument is filed of record in the appropriate county.

Section 5.

Amendment to Evidence Election to be Governed under Georgia Property Owners' Association Act.

This Declaration is not currently submitted or governed under Georgia Property Owners Association Act. However, at any time after the Developer or any successor-in-interest to Developer is no longer a record title Owner of at least one (1) Lot for sale, the Association,

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through its Board, may, without any other action being necessary, unilaterally elect to be so governed. In such event, the only requirement shall be to file an amendment to this Declaration .evidencing such election that is signed by the chairman of the Board and attested by any other Board member.

Section 6.

Withdrawal of Property.

Developer reserves the right to amend this Declaration unilaterally at any time so long as it holds an unexpired option to expand TAMARACK FALLS SUBDIVISION, without prior notice and without the consent of any Person, for the purpose of removing certain portions of the Property then owned by the Developer or its affiliates or the Association from the provisions of this Declaration to the extent originally included in error or as a result of any changes whatsoever in the plans for the Property desired to be effected by the Developer, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Property

Section 7.

Rights and Obligations.

Each grantee of the Developer, by the acceptance of a deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration. All rights, benefits and privileges of every character hereby imposed shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in the Property or any portion thereon and shall inure to the benefit of such grantee in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of

Section 8. Notices.

Notices provided for in this Declaration shall be in writing and shall be addressed to any Owner at his Lot or at such other address as hereinafter provided. Notices to the Developer shall be in writing and shall be addressed to T.H.D., INC., c/o Randy Chambers, 4014 Tamarack Dr. Kennesaw, Ga. 30152., such different address as disclosed in a written notice of change of address furnished to all Owners. Any Owner may designate a different address for notices to him conveyance or contract for conveyance.

by giving written notice to the Developer. Notices addressed as above shall be deemed delivered upon mailing by United States registered or certified mail, return receipt requested, or when delivered in person.

Section 9. Amendment

Except as provided elsewhere herein, this Declaration may be unilaterally at any time and from time to time by Developer,

(1) If such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith;

(2) If such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration;

(3) if such amendment is required to obtain the approval of this Declaration by an institutional lender, such as a bank, savings and loan association or life insurance company, or by governmental lender or purchaser of mortgage loans, such as the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots subject to this Declaration;

(4) If such amendment is necessary to enable any governmental agency, such as the Veterans Administration, or reputable private insurance company to insure mortgage, loans on the Lots subject to this Declaration. Further, this Declaration may be amended at any time and from time to time by an agreement signed by at least seventy-five (75) percent of the Owners of lots; provided, however, such amendment by the Owners shall not be effective unless also signed by Developer, if Developer is the Owner of any real property then subject to this Declaration. Any such amendment shall not become effective until the instrument evidencing such change has been filed for record. Every purchaser or grantee of any interest in any real property made subject to this Declaration, by acceptance of a deed or other conveyance therefore, thereby agrees that this Declaration may be amended as provided in this section.

Section 10. No Liability.

Developer has used its best efforts and acted with due diligence in connection with drafting these covenants.

IN WITNESS WHEREOF, the undersigned have executed these covenants on the day and year above written.

Signed, sealed and delivered in the presence of

T.H.D., INC.

By _____

Randy A. Chambers/ President

Witness

Notary Public