

01125  
0671

D. KEITH COLLINS  
ATTORNEY AT LAW  
6782 W. BROAD ST.  
DOUGLASVILLE, GA 30134  
PHONE 949-3400  
STATE OF GEORGIA

COUNTY OF DOUGLAS

FILED

JAN 5 2 20 PM '98  
DOUGLAS CO. COURTH  
JANE C. WILLIAMS, CLK

**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS FOR ELK RUN SUBDIVISION**

**THIS DECLARATION**, made on the date hereinafter set forth by EXXELL DEVELOPERS, INC., (hereinafter referred to as "Declarant" and "Owner").

**WITNESSETH:**

**WHEREAS**, Owner is the owner of certain property in the County of Douglas, State of Georgia, which is more particularly described in Exhibit "A," attached hereto and incorporated herein by this reference;

**WHEREAS**, Declarant and Owner desire to provide for the preservation and enhancement of the property values in Elk Run Subdivision, and for the maintenance of property and improvements thereon, and to this end desires to subject the property to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which are for the benefit of the Property; and

**WHEREAS**, Declarant and Owner have deemed it desirable, for the efficient preservation of the values in Elk Run Subdivision, to create an agency to which should be delegated and assigned the powers of owning, maintaining and administering the Common Area and improvements thereon and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

**WHEREAS**, Declarant will cause to be incorporated under the laws of the State of Georgia the Elk Run Homeowners Association, Inc., a non-profit corporation, for the purpose of exercising the aforesaid functions.

**NOW, THEREFORE**, Declarant and Owners hereby declare that all of the properties described above shall be held, sold, and conveyed, subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I**  
**DEFINITIONS**

Section 1. "Architectural Control Committee" shall mean and refer to Exxell Developers, Inc., Declarant, or such other individuals as Declarant may appoint, until all lots in Elk Run Subdivision have been fully developed and permanent improvements constructed thereon and sold to permanent residents, or at such other time as the Declarant in its sole discretion shall turn the same over to the Association.

Section 2. "Association" shall mean and refer to Elk Run Homeowners Association, Inc., its successors and assigns.

Section 3. "Exxell" shall mean Exxell Developers, Inc., a Georgia corporation, its successors and assigns.

Section 4. "Board" shall mean and refer to the Board of Directors of the Association.

Section 5. "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. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described in Exhibit "A" attached hereto and hereby made a part hereof by this reference.

Section 6. "Common Expenses" shall mean and refer to the actual and estimated expenses of operating the Association, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to the Declaration and the By-Laws and Articles of Incorporation of the Association.

Section 7. "Declarant" shall mean and refer to Exxell Developers, Inc., its successors and assigns, if such successors and assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development, and if said successors or assigns are named as Declarant by Exxell Developers, Inc. in any instrument of conveyance of said Lots.

Section 8. "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 9. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision made of the Properties with the exception of the Common Area.

Section 10. "Owner" shall mean and refer to the record owner, whether one or more persons, of the fee simple title to any lot which is part of the Property, but excluding those having such interest in merely as security for the performance of any obligation.

Section 11. "Person" shall mean and refer to a natural person, corporation, partnership, association, trust or other legal entity, or any combination thereof.

Section 12. "Property" shall mean and refer to that certain real property described on the plat hereinabove referenced.

Section 13. "Structure" shall mean and refer to:

(i) any thing or object the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration and not limitation, any building or part thereof, garage, porch, gazebo, shed, greenhouse or bathhouse, coop or cage, covered or uncovered patio, swimming pool, tennis court, fence, curbing, paving, wall, tree, shrub, sign, signboard, mailbox, driveway, temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such Lot;

(ii) any excavation, grading, fill ditch, diversion dam or other thing, object or device which affects or alters the natural flow of surface waters from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial creek, stream, wash or drainage channel from, upon or across any Lot; and

(iii) any change in grade at any point on a Lot of more than six (6) inches, whether or not subsection (ii) of this Section applies to such change.

## **ARTICLE II**

### **ARCHITECTURAL CONTROL COMMITTEE**

Section 1. Purpose, Powers and Duties of the Architectural Control Committee

(a) The purpose of the Architectural Control Committee is to assure that the installation, construction, or alteration of any Structure on any Lot is in accordance with the standards determined by the Architectural Control Committee. To the extent necessary to carry out such purpose, the Architectural Control Committee shall have all of the powers and duties to do each and every thing necessary, suitable, convenient or proper for, or in connection with or incidental to, the accomplishment of such purpose, including, without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any Structure on any Lot.

(b) To preserve the architectural appearance of the neighborhood, no construction or placement of improvements of any nature whatsoever shall be commenced or maintained by any owner, his family, tenants, visitors, guests, servants, and agents with respect to the exterior of any house or with respect to any other portion of any Lot or other parcel of land, including without limitation, the construction or installation of sidewalks, driveways, decks, patios, swimming pools, tennis courts, greenhouses, playhouses, garages, guests or servants quarters, or other outbuildings, nor shall any exterior addition to or change or alteration therein be made, unless and until the plans and specifications showing the nature, color, type, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to the harmony of external design, location, and appearance in relation to surrounding structures and

topography by the Architectural Control Committee. The Architectural Control Committee shall have the sole discretion to determine whether the plans and specifications submitted for approval are acceptable and in compliance with the total scheme of the neighborhood. If same are not approved or disapproved within thirty (30) days from date submitted, then same shall be approved by default.

### **ARTICLE III PROPERTY RIGHTS**

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

- (a) 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 situated upon the Common Area;
- (c) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for a period during which an assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- (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 purposes and subject to such conditions as may be agreed to by the members;
- (e) no such decision or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded;
- (f) the right of the Association to borrow money for the purpose of improving the Common Area or any portion thereof, or constructing, repairing or improving any facilities located or to be located thereon, and, upon the assent of two-thirds (2/3) of the Class A and B members to give as security a mortgage conveying all or any portion of the Common Area.
- (g) the easements reserved in Article VI of this Declaration.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right or use and enjoyment in and to the Common Area and the improvements thereon to the members of his family, his tenants, or contract purchasers who reside on the property.

**ARTICLE IV**  
**MEMBERSHIP AND VOTING RIGHTS**

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

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

Class A: Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one (1) 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 (1) vote be cast with respect to any Lot.

Class B: Class B member(s) shall be the Declarant and shall be entitled to five (5) votes for each Lot owned. The Declarant shall have the right to assign its voting rights by contract, in which case the Declarant will have no further obligation unless it reassumes said voting rights. The Class B membership shall cease and be converted to Class A membership on the happening of the following events:

- (a) when the total votes outstanding in the Class A membership equal the total outstanding in the Class B membership; or
- (b) seven years from the date of this Declaration; or
- (c) when, in its discretion, Declarant so determines.

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

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by the acceptance of a deed transfer, whether or not it shall be expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be charged on the land and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be personal obligation of the person who was the

Owner of such Lot at the time when assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties, for the improvement and maintenance of the Common Area.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Three Hundred Dollars (\$300.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above five percent (5%) only by the affirmative vote of two-thirds (2/3) of all votes entitled to be cast in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment 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 two-thirds (2/3) of the votes entitled to be cast in person or by proxy at a meeting called for this purpose. However, such assessments shall be within the limitations set forth in Section 3 hereof.

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

Section 6. Uniform Rate of Assessment. Both 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 commence on JANUARY 1, 1998 as to all Lots upon which there exist occupied residences. At the time of closing into a Purchase of a completed residence, there shall be paid the sum ~~of~~ EQUAL TO THE PRORATED ANNUAL DUES as the initial assessment for the calendar year in which said residence is purchased. This sum shall be prorated as of the date of closing over the entire calendar year during which the closing occurs. Anything contained herein to the contrary notwithstanding, neither Declarant nor any Purchaser of a Lot from Declarant who purchases solely to build and resale said Lot shall be responsible for assessments on Lots owned by the Declarant or such Purchaser for so long as said Lot does not contain an occupied residence. Declarant shall, however, fund any deficit which may exist between assessments and the annual budget until such time as any portion of the Additional Property is subjected to this Declaration. Thereafter, Declarant shall fund any such deficit for as long as there is a Class B member of the Association. Failure of Declarant to meet its obligation to fund budget deficits shall constitute a lien against the land it owns in the aforementioned subdivision. The due dates shall be established by the Declarant until there is no longer a Class B member, and then shall be established by the Board. The Association shall, upon demand, and for a reasonable charge, not to exceed Ten Dollars (\$10.00), 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. If the Association fails to respond to any such request within ten (10) days after receipt of such request, any lien then outstanding shall be deemed to have been extinguished.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments not paid within thirty (30) days after the due date, shall bear interest from the due date at a rate of six percent (6%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area, or Recreation Area, or abandonment of his Lot.

Section 9. Subordination of Lien to First Mortgage. The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage. 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 any 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.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein: (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (b) all Common Area; 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 except as set forth in Article V, Section 7.

**ARTICLE VI  
EASEMENTS**

Section 1. Utility Easements. There is hereby created in favor of the Association an easement upon, across, over, through and under all of the Common Area for ingress, egress, installation, replacement, repair and maintenance of all utility and service lines and system, including but not limited to water, sewer, gas, telephone, electricity, television cable or communication lines and systems. An easement is further granted to the Association, its officers, agents, employees and any management company retained by the Association, to enter in or to cross over the Common Area and the Lots, to inspect and to perform the duties of maintenance and repair of the Common Area and the Lots, as provided herein. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines of other utilities may be installed or relocated on the Property except as initially programmed and approved by the Declarant or thereafter approved by the Declarant or the Board. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by a separate recordable document, Declarant or the Association shall have the right to grant such easement on the Common Area without conflicting with the terms thereof.

Section 2. Easement for Declaration. Declarant and Owner hereby reserve for themselves, their successors, and assigns, the following easements and rights-of-way in, on, over, under and through any part of the Property owned by Declarant and Owner and the Common Area for so long as Declarant and Owner own any Lot primarily for the purpose of sale:

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



**ARTICLE VII**  
**GENERAL COVENANTS AND RESTRICTIONS**

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

Section 1. **Residential Use.** All Lots shall be restricted exclusively to single-family residential use; provided, however, that nothing herein shall be construed to prohibit or prevent Declarant or any builder of residences in Elk Run Subdivision from using any Lot owned by Declarant or such builder for the purpose of carrying on business related to the development improvement and sale of Lots and/or new homes in Elk Run Subdivision.

Section 2. **Common Area.** The Common Area shall be used by the Owner and its agents, servants, tenants, family members, invitees, and licensees for such other purposes as may be authorized by the Association.

Section 3. **Debris.** 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.

Section 4. **Erosion Control.** No activity which may create erosion or siltation problems shall be undertaken on any Lot except for the initial construction of residences and development of the Property.

Section 5. **Signs.**

(a) No signs whatsoever shall be installed, altered or maintained on any Lot, or on any portion of a Structure visible from the exterior thereof, except:

(i) such signs as may be required by legal proceedings;

(ii) not more than one "For Sale" or "For Rent" sign; provided, however, that in no event any such sign be larger than six (6) square feet in area;

(iii) directional signs for vehicular or pedestrian safety; and

(iv) entry signs used to identify subdivision, marketing signs used to advertise subdivision by Declarant and, in conjunction therewith, brochure holders.

(b) Following the consummation of the sale of any Lot, the sign located thereon shall be removed immediately.

Section 6. **Fences.** The Declarant shall have the right and the power to construct or have constructed chain link fences around the tennis courts on the Common Area. Except as set

forth in the preceding sentence, no chain link fences or cyclone fences may be placed in any front yard of any Lot. All fences must be approved by the Architectural Control Committee.

Section 7. Recreational Vehicles, Trailers, etc. Recreational vehicles, trailers, campers, trucks (except pickups and vans), travel buses or any such equipment must be parked in extreme rear of Property and sufficient natural cover erected to shield same from visibility. No inoperative vehicle shall be parked on any Lot for a period of time in excess of fourteen (14) days. No Owners or occupants of any Lot or parcel of land shall repair or restore any vehicle of any kind upon any Lot or upon any parcel of land, except for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility. No automobile, truck or vehicle of any type of nature shall be parked in any street or road of the Property at any time.

Section 8. Recreational Equipment. No recreational and playground equipment shall be placed or installed between the street on which any residence on said Lot fronts and a line parallel with the street from the furthest portion of the residence from the street. All recreational and playground equipment to be placed on a Lot shall be approved by the Architectural Control Committee.

Section 9. Accessory Structures. A detached accessory structure may be placed on a Lot to be used for a playhouse, swimming pool, tennis court, a tool shed, a mailbox, a dog house or a garage; a garage may also be an attached accessory structure. Such accessory structures shall not exceed twenty (20) feet in height and shall conform in exterior design and quality to the dwelling on the same Lot. With the exception of a garage that is attached to a dwelling, an accessory structure placed on a Lot shall be located only behind the dwelling, as such dwelling fronts on the street abutting such Lot. Such accessory structures shall also be located with such side and rear setback lines as may be required by applicable zoning law. However, there shall be no lighting for tennis courts or other outside lighting, except as may be approved by the Architectural Structure Committee. Any such accessory structure must be approved, in advance, in writing by the Architectural Control Committee.

Section 10. Improvement of Lots. All construction of dwellings, accessory structures and all other improvements in Elk Run 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 government agencies and authorities.
- (b) Concrete block or cinder block shall not be used as a building material for the exposed exterior surface of any dwelling or accessory structure constructed or placed on any Lot.
- (c) Only one mailbox shall be located on any Lot, which shall be approved by the Architectural Committee.

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

(e) No exposed above-ground tanks for the storage of fuel or water or any other substance shall be located on any Lot other than apparatus relating to solar energy, the location and design of which must first be approved by the Architectural Control Committee.

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

(g) All garages must have doors, and each garage door must be coordinated in design and color with the dwelling to which it is appurtenant.

(h) No above-ground swimming pools shall be allowed, and all pools shall be approved by the Architectural Control Committee.

(i) The enclosed, heated living area (exclusive of garages, carports, porches, terraces, bulk-storage and basement) shall contain not less than one thousand one hundred (1,100) square feet.

(j) Exterior TV or radio equipment shall not be permitted which are visible from the street upon which the home faces.

Section 11. 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 animal shall be allowed to become a nuisance.

Section 12. Accessory Structures Installed by Declarant. Entry signs, fences, walls and landscaping installed by Declarant on the Property shall be and are hereby dedicated to the use and benefit of all Owners, and shall not be removed or altered without a two-third (2/3) vote of the Association Class A members, and then only with unanimous consent of the Association and members.

Section 13. Miscellaneous Fixtures. To provide a neat, attractive and harmonious appearance throughout the neighborhood, no awnings, shades or window boxes shall be attached to, or hung or used on the exterior of, any window or door of any house, and no railings, fences, walls, antennae or satellite dishes shall be installed or constructed upon any Lot or parcel of land without the prior written consent of the Architectural Control Committee. Further, no foil or other reflective material shall be used on any windows or sunscreens, blinds, shades or for any other purpose, nor shall any window-mounting heating, air conditioning or fan units be permitted. Outside clotheslines or other facilities for drying clothes are specifically prohibited

and shall not be erected, placed or maintained upon any Lot or parcel of land, nor shall any clothing, rugs, or other items be hung on any railing, fence, hedge or wall.

**ARTICLE VIII**  
**GENERAL PROVISIONS**

Section 1.     **Enforcement.**

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

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

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

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

Section 4.     **Duration.** The covenants and restrictions of this Declaration shall run with and bind the land for a period of 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.

Section 5.     **Rights and Obligations.** Each grantee of the Declarant and Owner, by the acceptance of a deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration. All rights, benefits, and privileges of every character hereby imposed shall be deemed and taken to be covenants running with the Land and shall bind any person having at any time any interest or estate in the Property or any portion thereof, and shall

inure to the benefit of such grantee in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance or contract for conveyance.

Section 6. Annexation. Additional residential property and Common Area may be annexed to the Properties at the sole discretion of the Declarant/Owner. Notwithstanding the above, the additional property set forth in Exhibit "B," attached hereto and incorporated by this reference (hereinafter referred to as "Additional Property"), may be annexed by the Declarant without the consent of the members within five (5) years of the date of this instrument, provided that the Federal Housing Administration and the Veterans Administration does not determine such annexation not to be in accord with the general plan heretofore approved by them.

Section 7. Amendment. This declaration may be amended at any time and from time to time by Declarant and a vote of two-thirds (2/3) of the votes entitled to be cast; provided, however, so long as there is a Class B member, any amendment shall require approval of the Federal Housing Administration or the Veterans Administration:

(a) 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; or

(b) 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; or

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

(d) if such amendment is necessary to enable any governmental agency, such as the Veterans Administration, or reputable title insurance company to insure loans on the Lots subject to this Declaration. Such amendment would not include the right to re-plat Lots or the Common Area unless limited to changes specifically required by a reviewing agency to meet its requirements. Further, this Declaration may be amended at any time and from time to time by an agreement signed by at least seventy five percent (75%) of the votes entitled to be cast; provided, however, such amendment by the Owners shall not be effective unless also signed by Declarant, if Declarant is the owner of any real property then subject to this Declaration. No amendment to the provisions of this Declaration shall alter, modify, change or rescind any right, title, interest, or privilege herein granted or accorded to the holder of any Deed to Secure Debt encumbering any Lot or the Common Area affected thereby unless such holder shall consent in writing thereto. Any such amendment shall not become effective until the instrument evidencing such change has been filed of record. Every purchaser or grantee of any interest in any

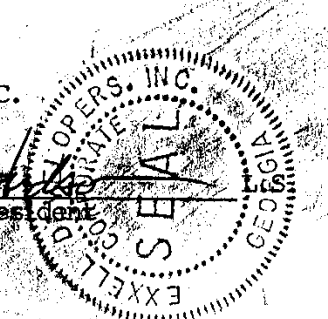
real property made subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that this Declaration may be amended as provided in this Section.

Section 8. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: (1) annexation of additional properties, other than the Additional Property set forth in Exhibit "B" attached hereto; (2) dedication of Common Area; and (3) amendment of this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, Declarant and Owner has hereunto set hand and seal, this the 30th day of December, 1997

EXXELL DEVELOPERS, INC.

By: Walter Hudson  
WALTER HUDSON, President



Signed, sealed and delivered in the presence of:

Walter Hudson  
Unofficial Witness

B. Keith Rollins  
Notary Public  
Public  
SAS COUNTY GEORGIA

MY COMMISSION EXPIRES MAY 10, 2001

**EXHIBIT "A"**

**ALL THAT TRACT and parcel of land lying and being in Land Lots 72 and 73 of the 1st District and 5th Section of Douglas county, Georgia, and being all of Elk Run Subdivision, Unit One, as shown by plat of said subdivision recorded in the real property records of Douglas County, Georgia, in Plat Book 23, Pages 156, 157, 158, 159 and 160; said plat being made a part hereof by this reference thereto for a more complete description of the metes and bounds, courses and distances of said property.**

EXHIBIT "B"

TRACT ONE:

ALL THAT TRACT and parcel of land lying and being in Land Lots 72 and 73 of the 1st District and 5th Section of Douglas County, Georgia, and being more particularly described as follows:

BEGINNING AT A POINT marked by an Iron pin located at the northeasterly land lot corner of Land Lot No. 72, same being the common land lot corners of Land Lots NO. 72, 73, 89 and 90); running thence South 00 degrees 23 minutes 07 seconds West and along the easterly land lot line of Land Lot No. 72 a distance of 1,374.75 feet to a point marked by an Iron pin; running thence North 89 degrees 09 minutes 50 seconds West a distance of 857.37 feet to a point marked by an iron pin; running thence North 89 degrees 23 minutes 37 seconds West a distance of 932.86 feet to a point marked by a nail; running thence North 89 degrees 29 minutes 17 seconds West a distance of 313.41 feet to a point marked by an Iron pin; running thence North 89 degrees 16 minutes 53 seconds West a distance of 828.65 feet to a point marked by an Iron pin located on the easterly side of Chapel Hill Road (80' ROW); running thence in a northerly direction and along the easterly side of Chapel Hill Road, and following the curvature thereof, a distance of 396.87 feet to a point marked by an iron pin (said curvature forming an arc which is subtended by a chord measured North 02 degrees 36 minutes 00 seconds East a length of 396.54 feet); running thence South 89 degrees 35 minutes 48 seconds East a distance of 550.05 feet to a point marked by an iron pin; running thence North 06 degrees 35 minutes 11 seconds East a distance of 676.33 feet to a point marked by an iron pin; running thence North 28 degrees 57 minutes 21 seconds West a distance of 136.32 feet to a point marked by an iron pin; running thence North 32 degrees 59 minutes 26 seconds West a distance of 454.45 feet to a point marked by an iron pin located on the southeasterly side of Anneewakee Road (80' ROW); running thence North 47 degrees 51 minutes 13 seconds East and along the southeasterly side of Anneewakee Road a distance of 1,550.01 feet to a point; running thence in a northeasterly direction and continuing along the southeasterly side of Anneewakee Road, and following the curvature thereof, a distance of 275.92 feet to a point marked by an Iron pin (said curvature forming an arc which is subtended by a chord measured North 49 degrees 34 minutes 26 seconds East a length of 275.68 feet); running thence South 00 degrees 16 minutes 14 seconds West a distance of 958.52 feet to a point marked by an iron pin; running thence South 89 degrees 44 minutes 20 seconds East a distance of 399.99 feet to a point marked by an iron pin; running thence North 00 degrees 15 minutes 04 seconds East a distance of 359.87 feet to a point marked by an iron pin; running thence South 88 degrees 39 minutes 39 seconds East a distance of 239.95 feet to a point marked by an iron pin located on the easterly side of the termination of Doublegate Drive; running thence South 88 degrees 41 minutes 45 seconds East a distance of 179.56 feet to a point marked by an Iron pin; running thence South 89 degrees 19 minutes 43 seconds East a distance of 209.78 feet to a point marked by an Iron pin located on the easterly land lot line of Land Lot No. 73; running thence South 00 degrees 20 minutes 08 seconds West and along the easterly land lot line of Land Lot No. 73 a distance of 823.90 feet to a point marked by an Iron pin located at the southeasterly land lot corner of Land Lot No. 73, same being the northeasterly land lot corner of Land Lot No. 72 and being the point of beginning; being all as shown upon that plat of survey prepared by Robert G. Vansant, Registered Land Surveyor, dated August 27, 1996; said plat being made a part hereof by this reference thereto.

TRACT TWO:

ALL THAT TRACT and parcel of land lying and being in Land Lot 73 of the 1st District and 5th Section of Douglas County, Georgia, and being more particularly described as follows:

BEGINNING AT A POINT marked by an Iron pin located at the intersection of the easterly side of Chapel Hill Road (80' ROW), and the northwesterly side of Anneewakee Road (80' ROW); running thence in a northerly direction and



01125  
0687

along the easterly side of Chapel Hill Road, and following the curvature thereof, a distance of 268.83 feet to a point (said curvature forming an arc which is subtended by a chord measured North 01 degrees 18 minutes 09 seconds East a length of 268.81 feet); running thence North 00 degrees 02 minutes 30 seconds West and along the easterly side of Chapel Hill Road a distance of 360.70 feet to a point marked by an iron pin; running thence North 88 degrees 41 minutes 20 seconds East a distance of 336.44 feet to a point marked by an iron pin; running thence South 31 degrees 23 minutes 57 seconds East a distance of 281.21 feet to a point marked by a concrete monument located on the northwesterly side of Anneewakee Road; running thence South 47 degrees 51 minutes 13 seconds West and along the northwesterly side of Anneewakee Road a distance of 594.34 feet to a point; running thence North 87 degrees 57 minutes 17 seconds West and continuing along the northwesterly side of Anneewakee Road a distance of 48.08 feet to a point marked by an iron pin located at the intersection of the northwesterly side of Anneewakee Road and the easterly side of Chapel Hill Road, same being the point of beginning; being all as shown upon that plat of survey prepared by Robert G. Vansant, Registered Land Surveyor, dated May 2, 1996; said plat being made a part hereof by this reference thereto.

LESS AND EXCEPT:

ALL THAT TRACT and parcel of land lying and being in Land Lots 72 and 73 of the 1st District and 5th Section of Douglas county, Georgia, and being all of Elk Run Subdivision, Unit One, as shown by plat of said subdivision recorded in the real property records of Douglas County, Georgia, in Plat Book 23, Pages 156, 157, 158, 159 and 160; said plat being made a part hereof by this reference thereto for a more complete description of the metes and bounds, courses and distances of said property.

RECORDED 1-21 1998  
JANE C. WILLIAMS, CLERK  
SUPERIOR COURT, DOUGLAS CO

BOOK 1125 PAGE 687



Doc ID: 002055440005 Type: GLR  
 Filed: 07/25/2007 at 08:50:00 AM  
 Fee Amt: \$18.00 Page 1 of 5  
 Douglas County Georgia  
 Cindy Chaffin Clerk Superior Court  
 BK 2596 PG 1017-1021

SPACE ABOVE RESERVED FOR RECORDING DATA

After recording, please return to:

Lazega & Johanson, LLC  
 3520 Piedmont Road N.E.  
 Suite 415  
 Atlanta, Georgia 30305

STATE OF GEORGIA

Cross Reference: Deed Book 1125

COUNTY OF DOUGLAS

Page 671

**AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS,  
 RESTRICTIONS AND EASEMENTS FOR ELK RUN SUBDIVISION**

**WHEREAS**, on January 5, 1996, Exxcell Developers, Inc. ("Declarant") filed that certain Declaration of Covenants, Conditions, Restrictions and Easements for Elk Run Subdivision in Deed Book 1125, Page 675 of the Douglas County, Georgia land records, as amended ("Declaration"); and

**WHEREAS**, Article VIII, Section 7 of the Declaration provides that the Declaration may be amended at any time and from time to time by the Declarant and a vote of two-thirds (2/3) of the votes entitled to be cast; provided, however, that no amendment shall be alter, modify, change or rescind any right, title, interest or privilege granted or accorded to any holder of any Deed to Secure Debt encumbering any Lot or Common Area affected thereby, unless such holder consents thereto in writing; and

**WHEREAS**, owners holding two-thirds (2/3) of the eligible votes have consented to this amendment as reflected by their signatures recorded in the records of the Association; and

**WHEREAS**, the Declarant no longer owns any property subject to the Declaration; and

**WHEREAS**, this amendment does not alter, modify, change or rescind any right, title, interest or privilege granted or accorded to any holder of any Deed to Secure Debt encumbering any Lot or Common Area; provided, however, in the event a court of competent jurisdiction determines otherwise with respect a particular holder of a Deed to Secure Debt encumbering a Lot or Common Area, then this amendment shall not be binding on the holder of the Deed to Secure Debt so involved, unless such holder consents in writing hereto.

**NOW, THEREFORE**, the Declaration is hereby amended as follows:

THIS AMENDMENT SUBMITS THE PROPERTY TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNERS ASSOCIATION ACT, O.C.G.A SECTION 44-3-220 ET.SEQ.

CLOSING ATTORNEY SHOULD CONTACT THE ASSOCIATION FOR ESTOPPEL CERTIFICATES REGARDING ASSESSMENTS OR OTHER CHARGES DUE ON LOTS.

1.

**Article I, Section 12 of the Declaration is hereby amended by adding the following sentence to the end thereto:**

The Property constitutes a residential property owners development which hereby submits to the Georgia Property Owners Association Act, O.C.G.A. Section 44-3-220 et. seq. (Michie 1982), as such Act may be amended from time to time. The Association shall have all rights afforded under the Act.

2.

**Article I of the Declaration is hereby amended by adding the following new Section 14 to the end thereto:**

Section 14. "Act" shall mean and refer to the Georgia Property Owners Association Act, O.C.G.A. Section 44-3-220 et. seq., (Michie 1982), as such Act may be amended from time to time.

3.

**Article V, Section 1 of the Declaration is amended by deleting the last three sentences therein and inserting the following sentences therefor:**

The annual and special assessments, together with interest, costs, reasonable attorney's fees actually incurred, and if the Board so elects, rents, in the maximum amount allowed under the Act shall be charged on the land and shall be an automatic, statutory and continuing lien upon the Lot against which the assessment was made. Each assessment, together with interest, costs, and reasonable attorney's fees actually incurred, and if the Board so elects, rents, in the maximum amount allowed under the Act, shall also be a personal obligation of the person who was the Owner of the Lot at the time when the assessment fell due.

4.

**Article V, Section 7 of the Declaration is hereby amended by deleted in its entirety and the following new Section 7 is substituted therefor:**

Section 7. Statement of Account. Any Owner, mortgagee on a Lot, person having executed a contract for the purchase of a Lot, or lender considering a loan to be secured by a Lot shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments due and unpaid, including any late charges, interest, fines or other charges against such Lot. The Association shall respond in writing within five (5) business days of receipt of the request for a statement; provided, however, the Association may require the payment of a fee, not to exceed ten (\$10.00) dollars, or such higher amount authorized by the Act, as a prerequisite to the issuance of a statement.

5.

**Article V, Section 8 of the Declaration is hereby deleted in its entirety and the following new Section 8 is substituted therefor:**

**Section 8. Effect of Nonpayment of Assessments: Remedies of the Association.** All assessments and other charges not paid on or before the due date shall be delinquent, and the Owner shall be in default. If any assessments or any part thereof or any fine or any other charge, is not paid in full within thirty (30) days of the due date, or such later date as may be provided by the Board, a late charge equal to the greater of ten (\$10.00) dollars or ten (10%) percent of the amount not paid, or such higher amounts as may be authorized by the Act, may be imposed without further notice or warning to the delinquent Owner and interest at the rate of ten (10%) percent per annum or such higher rate as permitted by the Act shall accrue from the due date. If assessments, fines or other charges, or any part thereof, remain unpaid more than thirty (30) days after the assessment payments first become delinquent, the Association, acting through the Board, may institute suit to collect all amounts pursuant to the provisions of the Declaration, the By-Laws, the Act and Georgia law, including reasonable attorney's fees actually incurred.

6.

**Article V, Section 9 of the Declaration is hereby deleted in its entirety and the following new Section 9 is substituted therefor:**

**Section 9. Priority of Lien.** The liens provided for herein shall have priority as provided in the Act.

7.

**Article V, Section 10 of the Declaration is hereby amended by deleting the words "except as set forth in Article V, Section 7" in the last sentence thereof.**

8.

**Article VIII, Section 4 of the Declaration is hereby deleted in its entirety and the following new Section 4 is substituted therefor:**

**Section 4. Duration.** The covenants and conditions of this Declaration shall run with and bind the Property perpetually to the extent provided in the Act.

9.

**Article VIII, Section 7 of the Declaration is hereby amended by deleting the words "two-thirds (2/3)" therefrom and inserting the words "sixty-six and two-thirds (66-2/3)" therefor.**

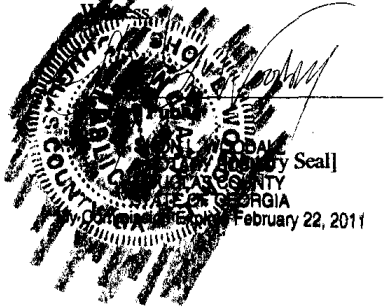
Article VIII, Section 7 of the Declaration is hereby further amended by deleting the sentence "Further, this Declaration may be amended at any time and from time to time by an agreement signed by at least seventy-five percent (75%) of votes entitled to be cast; provided, however, such amendment by the Owners shall not be effective unless also signed by the Declarant, if the Declarant is the owner of any real property then subject to this Declaration." therefrom.

IN WITNESS WHEREOF, the undersigned officers of the Elk Run Homeowners Association, Inc. hereby certify that the foregoing amendment was approved by the requisite vote of the membership with all required notices duly given.

This 21 day of July, 2007.

Sworn to and subscribed before me  
this 21 day of July  
2007.

John Priddy



ASSOCIATION: ELK RUN HOMEOWNERS  
ASSOCIATION, INC.

By: [Signature]  
President

Attest: Harry Bacon  
Secretary



**AMENDMENT TO THE BYLAWS OF  
ELK RUN HOMEOWNERS ASSOCIATION, INC.**

**WHEREAS**, on January 5, 1996, Exxcell Developers, Inc. ("Declarant") filed that certain Declaration of Covenants, Conditions, Restrictions and Easements for Elk Run Subdivision in Deed Book 1125, Page 675 of the Douglas County, Georgia land records, as amended ("Declaration"); and

**WHEREAS**, certain Bylaws of the Elk Run Homeowners Association were adopted ("Bylaws"); and

**WHEREAS**, Article VI, Section 6.04 of the Bylaws provide that the Bylaws may be amended upon the affirmative vote, written consent, or any combination thereof, of two-thirds (2/3) of the Total Association Vote; and

**WHEREAS**, two-thirds (2/3) of the members eligible to vote have approved this amendment.

**NOW, THEREFORE**, the Bylaws are amended as follows:

1.

**Article II, Section 2.04 of the Bylaws is hereby deleted in its entirety and the following new Section 2.04 is substituted therefor:**

2.04. **Notice of Meetings.** Written notice stating the place, day and time of any meeting of the Members shall be served, mailed or delivered to each Member entitled to vote at such meeting at least twenty-one (21) days prior to each annual meeting and at least seven (7) days prior to each special meeting.

2.

**Article III, Section 3.18 of the Bylaws is hereby amended by adding the following new subsection (l) to the end thereto:**

(l) exercising all rights and powers afforded under the Act.

**IN WITNESS WHEREOF**, the undersigned officers of the Elk Run Homeowners Association, Inc. hereby certify that the foregoing amendments to the Bylaws were approved by the requisite two-thirds (2/3) of the Total Association Vote, with all required notices duly given.

This 21 day of July, 2007.

Sworn to and subscribed before me  
this 1 day of July,  
2007.

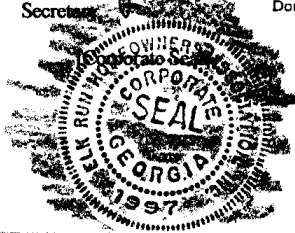
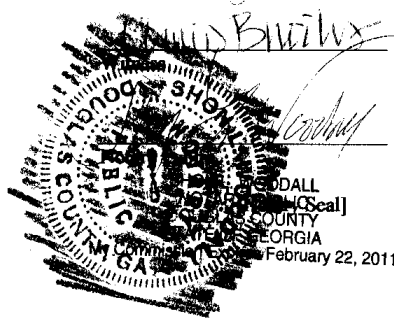
ASSOCIATION: **ELK RUN HOMEOWNERS  
ASSOCIATION, INC.**

By: [Signature]  
President

RECORDED

AUG 3 2007

Attest: [Signature] Cindy W. Chatin, Clerk  
Secretary Superior & State Court  
Douglas County, GA



FILED

13 MAY 31 AM 8:03

SUPERIOR COURT  
DOUGLAS COUNTY, GEORGIA

ELK RUN HOA ✓  
4211 High Country Drive  
Douglasville GA 30135

Return To:  
Lazega & Johnson, LLC  
3520 Piedmont Road, N.E., Suite 415  
Atlanta, Georgia 30305 Attn: Miye Johnson Yi



Doc ID: 006909450128 Type: COVE  
Recorded: 05/31/2013 at 08:03:00 AM  
Fee Amt: \$266.00 Page 1 of 128  
Douglas County Georgia  
TAMMY M HOWARD Clerk Superior Court

[Space Above Reserved for Recording Data]

STATE OF GEORGIA  
COUNTY OF DOUGLAS

BK 3132 PG 632-759

Cross Reference: Deed Book 1125  
Page: 671

AMENDMENT TO THE DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR ELK RUN SUBDIVISION

WHEREAS, on January 5, 1996, Exxcell Developers, Inc. ("Declarant"), filed that certain Declaration of Covenants, Conditions, Restrictions and Easements for Elk Run Subdivision in Deed Book 1125, Page 675, et seq., Douglas County, Georgia land records, as amended ("Declaration"); and

WHEREAS, Article VIII, Section 7 of the Declaration provides that the Declaration may be amended at any time and from time to time by the Declarant and a vote of sixty-six and two-thirds (66-2/3) of the votes entitled to be cast; provided, however, that no amendment shall alter, modify, change or rescind any right, title, interest or privilege granted or accorded to any holder of any Deed to Secure Debt encumbering any Lot or Common Area affected thereby, unless such holder consents thereto in writing; and

WHEREAS, Owners holding sixty-six and two-thirds (66-2/3) of the eligible votes have consented to this amendment as reflected by their signatures in the records of the Association; and

WHEREAS, the Declarant no longer owns any property subject to the Declaration; and

WHEREAS, this amendment does not alter, modify, change or rescind any right, title, interest or privilege granted or accorded to any holder of any deed to Secure Debt encumbering any Lot or Common Area; provided, however, in the event a court of competent jurisdiction determines otherwise with respect to a particular holder of a Deed to Secure Debt encumbering a Lot or Common Area, then this amendment shall not be binding on the holder of the Deed to Secure Debt so involved, unless such holder consents in writing hereto.

NOW, THEREFORE, the Declaration is hereby amended as follows:

1.

Article IV of the Declaration is hereby amended by adding the following new Section 11 to the end thereto:

Section 11. Capital Contribution Assessment Upon Transfer of Lots. In addition to all other assessments, fees and charges provided for herein, the purchaser or grantee of every Lot, by deed, foreclosure or otherwise, may be assessed and be subject to a non-refundable, non-prorated capital contribution assessment ("Capital Contribution Assessment") upon each and every conveyance or transfer of the Lot to any person other than to the spouse of the Owner or heir of the deceased Owner. The Capital Contribution Assessment shall be an amount determined annually by the Board of Directors, not to exceed one year's assessments applicable to such Lot at the time of such conveyance or transfer.

128

The Capital Contribution Assessment shall be due and payable by the purchaser or grantee at the time of conveyance or transfer of the Lot and shall be collected at the closing of each such conveyance or transfer.

The Capital Contribution Assessment shall not constitute an advance payment of annual assessments. The

Capital Contribution Assessment shall constitute a specific assessment and continuing lien against such Lot, and a personal obligation of the Owner of such Lot.

2.

Article VII of the Declaration is hereby amended by adding the following new Section 14 to the end thereto:

Section 14. Leasing And Occupancy of Lots. To preserve the character of the Elk Run community as predominantly Owner-occupied, the leasing of Lots is subject to the requirements specified below. "Leasing" means the occupancy of a Lot in the community by any person(s) other than: (1) the Lot Owner or a parent, child or spouse of an Owner; (2) a trustee or beneficiary of an Owner that is a trust; or (3) a roommate of any of the above who also occupies the Lot as his or her primary residence.

A. Authorized Leasing. Leasing of Lots is allowed only by: (1) an Owner who is lawfully leasing his or her Lot on the Effective Date of this Amendment (hereinafter a "Grandfathered Owner" and a "Grandfathered Lot"); (2) a non-Grandfathered Owner who has received a Leasing Permit as provided below; (3) a non-Grandfathered Owner who has received a Hardship Permit as provided below; or (4) the Association. Leasing Permits and Hardship Permits shall be valid only as to a specific Owner and Lot and shall not be transferable between either Lots or Owners (including a subsequent Owner of a Lot where such permit was issued to the Owner's predecessor-in-title). To qualify to be a Grandfathered Owner hereunder, the Owner must not only be lawfully leasing his or her Lot on the Effective Date of this Amendment, the Owner must within 30 days of the Effective Date, provide the Board, by personal delivery to a director or by certified mail, a copy of the lease in effect on the Effective Date. Any Owner leasing a Lot on the Effective Date who does not provide a lease copy as provided herein shall be in violation of the Declaration, and the Board may terminate such unauthorized lease and remove all unauthorized occupants, as provided herein. Grandfathering hereunder shall automatically expire, and any lease of the Lot shall automatically terminate, on: (i) the conveyance of record title to the Grandfathered Lot to any person other than the Owner's spouse; or (ii) the Owner becoming 30 days delinquent in the payment of any assessment or charge owed to the Association.

(i) Leasing Permits. The Board of Directors shall approve an Owner's request for a Leasing Permit if the total number of current, outstanding Leasing Permits plus Grandfathered Lots is less than ten (10%) percent of the Lots, except that a Leasing Permit shall not be issued to any Owner if the Lot is shown on the Association's books and records to be more than 30 days past due in any assessment or charge or if the Owner is in violation of the Declaration, Bylaws, or any Association rules and regulations.

Owners who have been denied a Leasing Permit because the ten (10%) percent limit is satisfied shall be placed on a waiting list to be issued such a permit, if they so desire, when the above conditions have been satisfied. The issuance of a Hardship Leasing Permit to an Owner shall not cause the Owner to be removed from the waiting list for a Leasing Permit.

This ten (10%) percent limit shall not prevent a Grandfathered Owner from continuing to lease his or her Grandfathered Lot as provided herein.

(ii) Hardships Permits. If the inability to lease will result in an undue hardship to the Owner, then the Owner may seek to lease on a hardship basis, for a term not to exceed one year, by applying to the Board of Directors for a Hardship Permit. The Board may



approve or deny an Owner's request for Hardship Permit in its discretion after considering the following factors: (1) the nature, degree, and likely duration of the hardship; (2) the harm, if any, which will result to the community if such permit is issued; (3) the number of outstanding Hardship Permits; (4) the Owner's ability to cure the hardship; and (5) whether previous Hardship Permits have been issued to such Owner; provided, however, the Board may deny a Hardship Permit to any Owner if the Lot is shown on the Association's books and records to be more than 30 days past due in any Association rules and regulations. Unless otherwise determined

by the Board, a Hardship Permit authorizes an Owner to lease the Lot once for a term not to exceed one year.

- (iii) Expiration and Revocation of Permits. Leasing Permits and Hardship Permits are automatically revoked upon: (1) the sale or transfer of the Lot to a third party (excluding sales or transfers to an Owner's spouse); (2) the failure of an Owner to lease his or her Lot for 120 consecutive days at any time after the issuance of such permit; or (3) the occupancy of the Lot by the Owner. A Hardship Permit shall be revoked automatically if, during the term of such permit, the Owner is approved for and receives a Leasing Permit. An Owner may apply for an additional Hardship Permit at the expiration or revocation of a previous one.

B. General Leasing Provisions.

- (i) Notice and Approval. At least seven (7) days before entering into a lease, the Owner shall provide the Board of Directors with notice of the Owner's intention to lease his or her Lot. The notice shall include: (1) a copy of the proposed lease; (2) the names, phone numbers, email addresses, work locations and work phone numbers of all of the proposed occupants of the Lot; (3) the Owner's primary lot address and phone number, email address, work location and work phone number; and (4) such other information required by the Board. Within 10 days after executing a lease for a Lot, the Owner shall provide the Board with a copy of the executed lease.
- (ii) Lease Terms. Lots may be leased only in their entirety; no rooms or fractions of Lots may be leased without prior written Board approval. All leases must be for an initial term of not less than one year, except with written Board approval.
- (iii) Lease Administration Fee. In addition to annual assessments, special assessments, and other charges provided for under this Declaration or the Bylaws, an Owner who leases a Lot shall be required to pay to the Association an annual Leasing Administration Fee in an amount established by the Board of Directors, but not to exceed \$500.00 or such higher amount as may be approved by a majority of the eligible Association members voting in person or by proxy at a duly called meeting, or by written consent or ballot in lieu of a meeting as provided in the Georgia Nonprofit Corporation Code. The Leasing Administration Fee shall be non-prorated and shall be due within 30 days of the date any lease is executed or an occupancy relationship is created hereunder, and annually on or before March 1 of each year thereafter.
- (iv) Liability for Assessments; Compliance. The Lot Owner must provide the occupant copies of the Declaration, Bylaws and Association rules and regulations. The provisions of Exhibit "A" attached hereto and incorporated herein by reference are incorporated into each lease of any Lot executed, modified, renewed or extended after the Effective Date of this Amendment, whether or not expressly stated therein, and into the terms of any tenancy or occupancy of a Lot even if no written lease or agreement exists between the Owner and the occupant.

- C. Enforcement. If a Lot is leased or occupied in violation of the Declaration, Bylaws or Association Rules and Regulations (hereinafter "Association Legal Documents"), or if the Owner, occupant or guest violates the Association Legal Documents, such violation is deemed to be a default under the terms of any lease or occupancy and the Association may require the Owner to evict the occupants. In addition to all other remedies permitted by this Declaration,

Article VIII of the Declaration is hereby amended by adding the following new Section 9 to the end thereto:

Section 9. Security. The Association may, but shall not be required to, provide measures or take actions which directly or indirectly improve security at the Property. However, each Owner, for himself or herself and his or her tenants, guests, licensees and invitees, acknowledges and agrees that the Association is not a provider of security and that the Association shall not have a duty to provide security at the Property. Furthermore, the Association does not guarantee that non-Owners and non-Occupants will not gain access to the Property and commit criminal acts, nor that the criminal acts at the Property will not be committed by other Lot Owners or Occupants. It shall be the responsibility of each Owner to protect his or her person and property, and all responsibility to provide such security shall lie solely with each Lot Owner. The Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of measures undertaken.

IN WITNESS WHEREOF, the undersigned officers of Elk Run Homeowners Association, Inc. hereby certify that the above amendments to the Declaration were duly adopted by Owners holding at least sixty-six and two-thirds (66-2/3) of the eligible votes, with any required notice duly given.

This 10<sup>th</sup> day of June, 2009.

Sworn to and subscribed before me this 28<sup>th</sup> day of MAY, 2013.

*[Signature]*  
Witness

*[Signature]*  
Notary Public

[Notary Seal]

ELK RUN HOMEOWNERS ASSOCIATION, INC.

By: *[Signature]* (Seal)  
President

Attest: *[Signature]* (Seal)  
Secretary

[Corporate Seal]

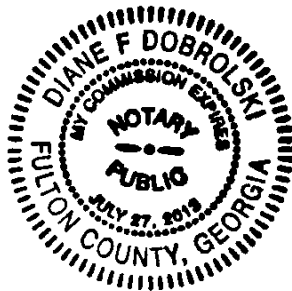


EXHIBIT "A"

AMENDMENT TO THE DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR ELK RUN SUBDIVISION

The following provisions are incorporated into each lease of any Lot at Elk Run executed, modified, renewed or extended after the date of recording of this Amendment to the Declaration of Covenants, Conditions, Restrictions and Easements for Elk Run in the Douglas County, Georgia land records (the "Effective Date"), whether or not expressly stated therein, and into the terms of any tenancy or occupancy of a Lot, even if no written lease or agreement exists between the Owner and the occupant:

(A) Compliance with Association Legal Documents

All terms defined in the Declaration of Covenants, Conditions, Restrictions and Easements for Elk Run are incorporated herein by this reference. The Owner and each occupant of the leased Lot at Elk Run shall comply with all provisions of the Declaration, Bylaws and Association rules and regulations (collectively the "Association Legal Documents"). The Owner and occupants are responsible for violations by any guests of the Lot and may be sanctioned for any such violation.

If a Lot is leased or occupied in violation of the Association Legal Documents, or if the Owner, occupant or guest violates the Association Legal Documents, the Association's Board of Directors shall be authorized to take all enforcement actions against the Owner and/or occupant authorized under the Association Legal Documents or Georgia law.

(B) Use of Recreational Facilities

The Owner transfers and assigns to the occupant, for the term of the lease, all rights and privileges the Owner has to use any amenities and recreational facilities at Elk Run.

(C) Liability for Assessments

When an Owner who is leasing his or her Lot fails to pay an assessment or any other charge to the Association when due, the delinquent Owner hereby consents to the assignment of any rent received from the occupant during the period of the delinquency. In such case, upon request by the Board, the occupant shall pay to the Association all unpaid assessments and other charges payable during and prior to the term of the lease and any other period of occupancy. However, the occupant need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by the occupant shall reduce, by the same amount, the occupant's obligation to make monthly rental payments to the Owner. If the occupant fails to comply with the Board's request to pay assessments or other charges, such failure shall be deemed a violation of the Declaration and, in addition to all other enforcement rights, the occupant shall pay to the Association all amounts authorized under the Declaration as if the occupant were the Owner of the Lot. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.