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**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR WHITTINGHAM PARK**

THIS DECLARATION, made this 3rd day of June, 1996, by CHATHAM HOLDINGS CORPORATION, a Georgia corporation (hereinafter referred to as "Developer").

Doc#00051529 Rec#00021372
GEORGIA, FULTON COUNTY
Filed and Recorded
06/13/1996 12:53P
JUANITA HICKS
Clerk, Superior Ct.

WITNESSETH:

WHEREAS, Developer is the owner of certain real property lying and being in Land Lots 187 and 188, of the 1st District, 2nd Section of the City of Roswell, Fulton County, Georgia, which real property is more particularly described in Exhibit "A" attached hereto and by reference made a part hereof; and

WHEREAS, Developer has entered into that certain Agreement for the Purchase and Sale of Real Estate (the "Contract") with Janet Ricker Builder, Inc. ("Builder"), dated July 19, 1995, which Contract contemplates the sale by Developer to Builder of all or a portion of the Property in one or more phases;

WHEREAS, Developer and Builder desire to provide for the preservation and enhancement of the property values in Whittingham Park Subdivision and for the maintenance of the property and improvements thereon, and to this end desire 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 and Builder have deemed it desirable for the efficient preservation of the property values in Whittingham Park Subdivision to create an association 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.

NOW, THEREFORE, Developer and Builder hereby declare that all of the real property described in Exhibit "A" 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 I
DEFINITIONS**

Section 1. "*Architectural Control Committee*" shall mean and refer to J. David Chatham, Harry L. Hammond, Jr., and Janet L. Ricker, or such other individuals as Developer may appoint until all lots in Whittingham Park 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; provided, however, in the event Builder shall suffer an event of default under the Contract and fail to cure such default within the applicable cure period, if any, then, thereafter, the Architectural Control Committee shall consist of J. David Chatham, Harry L. Hammond, Jr., and such third party as they shall appoint, until such time as they are replaced pursuant to the Bylaws of the Association as hereinabove contemplated.

Section 2. "*Association*" shall mean and refer to Whittingham Park Homeowners 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, including but not limited to any easements benefiting the Owners and/or the Association including an easement for the maintenance of the landscape entrance, walls, signage, street lights, water meters, and the surface water drainage and detention pond easements depicted on the Plat.

Section 5. "*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 this 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 (i) **Chatham Holdings Corporation**, a Georgia corporation, or (ii) any successor-in-title or any successor-in-interest to Chatham Holdings Corporation to all or any portion of the Property, provided in the instrument of conveyance to any such successor-in-title or successor-in-interest, such successor-in-title 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 therefor.

Section 11. "*Plat*" shall mean and refer to that certain Plat of Whittingham Park Subdivision, prepared by David A. Burre Engineers & Surveyors, Inc., recorded April 16, 1996, in Plat Book 189, Page 151, in the office of the Clerk of Superior Court of Fulton County, Georgia.

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.

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 devise 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 13 applies to any change.

ARTICLE II *ARCHITECTURAL CONTROL COMMITTEE*

Section 1. ***Purpose, Powers and Duties of the Architectural Control Committee.*** The purpose of the Architectural Control Committee is to assure that plans and specifications for the installation, construction or alteration of any Structure on any Lot are submitted to the Architectural Control Committee (hereinafter "ACC") for approval (i) as to whether the proposed installation, construction or alternation is in conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the 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 ACC shall have all of the power 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. **Meetings.** Meetings of the ACC shall be held at such time and at such place as the ACC shall specify. At each meeting of the ACC, the presence of a majority of the members then in office shall constitute a quorum for the transaction of business. Except as otherwise provided herein, the act of a majority of the members of the ACC present at any regular or special meeting thereof, at which a quorum is present shall constitute the act of the ACC. Any action required to be taken at a meeting of the ACC, or any action which may be taken at a meeting of the ACC, may be taken without a meeting if written consent is obtained from all members of the ACC, setting forth the action so taken. Such consent shall have the same force and effect as a unanimous vote.

Section 3. **Action of Members of Architectural Control Committee.** Any member of the ACC may be authorized by the ACC to exercise the full authority of the ACC with respect to all matters over which the ACC has authority as may be specified by resolution of the ACC. The action of such member with respect to the matters specified shall be final and binding upon the ACC and upon any applicant for an approval permit or authorization; subject, however, to review and modification by the ACC on its own motion or appeal by the applicant to the ACC on its own motion or appeal by the applicant to the ACC as provided herein. The applicant may, within twenty-four (24) hours after receipt of notice of any decision which applicant deems to be unsatisfactory, file a written request to have the matter in question reviewed by the ACC. Upon the filing of any such request, the matter with respect to which such request was filed, shall be submitted to, and reviewed promptly by, the ACC, but in no event later than fifteen (15) days after the filing of such request. The decision of a majority of the members of the ACC present at any meeting at which a quorum is present with respect to such matter shall be final and binding.

Section 4. **Submission of Plans and Specifications.** No construction or placement of any 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 plans and specifications therefor shall have been first submitted to and approved by the ACC, such approval to be designated in writing directly on said plans and specifications by a member of the ACC. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the ACC.

Section 5. **Approval and Disapproval of Plans and Specifications.**

(a) The Architectural Control Committee shall have the right to approve or disapprove any plans and specifications submitted to it in its sole discretion. Approval of the plans and specifications shall not be unreasonably withheld by the Architectural Control Committee.

(b) Approval of any such plans and specifications relating to any Lot or Structure 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, in all material respects, such plans and specifications, as approved, and any conditions attached to any such approval.

(c) Neither Developer nor any member of the ACC shall be responsible or liable in any way for any defects in any plans or specifications approved by the ACC, nor for any structural defects in any work done according to such plans and specifications approved by the ACC. Further, approval of plans and specifications by the ACC shall not be deemed to represent or warrant to any Person the quality, function or operation of the Structure or of any construction, workmanship, engineering, materials or equipment. Neither Developer nor any member of the ACC 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 ACC, every Owner of any Lot releases and agrees to hold harmless and to defend Developer and any member of the ACC from any such alleged liability, claim and/or damage.

Section 6. ***Obligation to Act.*** The ACC shall take action on any plans and specifications submitted as herein provided within fifteen (15) days after receipt thereof. Approval by the ACC, if granted, together with any conditions imposed by the ACC, shall be placed in writing on the plans and specifications and shall be returned to the applicant. Failure by the ACC to take action within fifteen (15) days of the receipt of plans and specifications submitted for approval shall be deemed approval of such plans and specifications.

Section 7. ***Violations.***

(a) If any Structure shall be erected, placed, maintained or altered upon any Lot otherwise than in material accordance with the plans and specifications approved by the ACC 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 ACC such violation shall have occurred, the ACC shall be entitled and empowered to enjoin or remove any such construction. Any costs and expenses incurred by the ACC in enjoining and/or removing any construction or improvements

shall be added to and become a part of the assessment of which the Owner and his Lot are subject.

(b) The ACC shall provide written notice to the Owner by certified mail, return receipt requested, 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 receipt of the aforesaid notice of violation as shown by the return receipt, or if delivery is rejected, the date twenty (20) days after the mailing of the aforesaid notice, then the ACC 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 ACC, shall be entitled to seek equitable relief to enjoin such construction.

ARTICLE III *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 and the term "Owner" is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation, and further is not intended to include the Declarant or the builder of any Structure on any Lot who holds title to such Lot solely for resale upon completion of the Structure. 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: The Class A members shall all be Owners, with the exception of the Declarant, 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 Declarant 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 either of the following events.

(a) when the total votes outstanding in 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.

Section 3. Notwithstanding any provision contained herein to the contrary, for so long as Declarant retains the right and obligation of the Association, it shall not be subject to any voting control of the Owners.

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 right and easement shall be appurtenant to and shall pass with the title to every Lot:

- (a) 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 of the Class A and B members to give as security a mortgage conveying all or any portion of the Common Area.
- (b) 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. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of the Owners, agreeing to such dedication or transfer, has been recorded.
- (c) the easements reserved in Article VII of this Declaration.

Section 2. ***Delegation of Use.*** Any Owner may delegate, in accordance with the Bylaws, his right of use and enjoyment in and to the Common Area and the improvements thereon, if any, to the members of his family, his tenants, guests and invitees, subject to such regulations as may be established from time to time by the Association.

Section 3. ***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 Owner. The Association hereby covenants and agrees to accept from Developer all such conveyances of real and personal property.

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 therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments 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, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when such assessment fell due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them.

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 thereon, 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 Association's annual meeting to prepare a budget covering the estimated Common Expenses of operating the Association for the coming year, such budget to include a capital contribution or reserve account in accordance with the capital needs of the Association. The budget and the proposed annual assessments to be levied against such 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 (i) Developer, so long as it continues to own more than ten (10%)

percent of the Lots; or (ii) a vote of the 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 and annual assessments in effect 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 the 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 capital improvements 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 Owners and the Developer, 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 any action authorized under Section 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 sixty (60%) percent of all the votes 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. ***Rate of Assessment.*** Annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on any basis deemed appropriate by the Association.

Section 7. ***Date of Commencement of Annual Assessments; Due Dates.*** The annual assessments provided for herein shall be paid in such manner and on such dates as may be fixed by the Board. Anything contained herein to the contrary notwithstanding, Developer or any builder of any structure on any Lot who title to such Lot solely for resale shall not be responsible for assessments on Lots owned by the developer or such builder.

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 the 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 of any such action 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 here for non-use 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. ***Subordination of the Lien to First Mortgage.*** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage, first purchase money security deed, or security deed representing a first lien on said property. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to 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.

Section 10. ***Exempt Property.*** The following property subject to this Declaration shall be exempt 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; (c) all properties exempted from taxation by state or local governments upon the terms and to the extent of such legal exemption. Notwithstanding any provision herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

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 Areas shall be deemed to include the maintenance, repair and replacement of (i) all roads, driveways, walks, parking areas and buildings and other improvements, if any, situated within the Common Area; (ii) such utility lines, pipes, plumbing, wires, conduits, storm water drainage facilities, retention ponds and systems which are a part of the Common Area; and (iii) all lawns, trees, shrubs, hedges, grass and other landscaping situated within or upon the Common Area.

Section 2. ***Owner's Responsibility.*** 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, downspouts, 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 hereinabove, the Architectural Control Committee, its agents and representatives, shall have the right of abatement as provided in Section 1(b) of Article X hereof. Such Owner shall be personally liable to the Architectural Control Committee for the direct and indirect cost of such abatement, which costs shall be added to and become part of the assessment to which such Owner and his Lot are subject. The provisions hereof shall not be construed, however, as an obligation on the part of the Architectural Control Committee to mow, clear, cut or prune any Lot; to provide garbage or trash removal service, or to perform such exterior maintenance.

ARTICLE VII ***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 systems, including but not limited to, water, sewers, gas, telephones, electricity, television, cable or communication lines and systems, as well as all easement areas depicted on the plat (including the sign easement). 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 for herein. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines or other utilities may be installed or relocated on the Property except as initially programmed and approved by the Developer or thereafter approved by Developer or the Board. Should any utility furnishing a service covered by the general easement therein provided request a specific easement be a separate recordable document, Developer or the Association shall have the right to grant such easement on the Common Area without conflicting with the terms hereof.

Section 2. ***Easements for Developer.*** Developer hereby reserves for itself, its successors and assigns, the following easements and rights-of-way in, on, over, under and through any part of the Property owned by Developer and the Common Area for so long as Developer owns any Lot primarily for the purpose of sale:

- (a) For the erection, installation, construction and maintenance of wires, lines and conduits and necessary or proper attachments in connection with the transmission of electricity, gas, water, telephone, community antenna, 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 the use of the Common Area and any sales offices, model units and parking spaces in connection with its efforts to market Lots; and
- (e) 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, 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 VIII
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. No Lot, or any portion thereof, shall at any time be used for any commercial, business or professional purpose; provided, however, that nothing herein shall be construed to prohibit or prevent Developer or any builder of residences on those Lots located in Whittingham Park Subdivision and described in Exhibit "A" 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 those Lots in Whittingham Park Subdivision and described in Exhibit "A".

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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 upon any Lot, 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 to others or unreasonably interferes with other Owners' use of their Lots 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 an 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.

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 Control Committee of plans and specifications for such split, division or subdivision and the approval of the Fulton County Department of Planning and Community Development.

Section 5. **Erosion Control.** No activity which may create erosion or siltation problems shall be undertaken on any Lot without the prior written approval of the Architectural Control Committee of plans and specifications for the prevention and control of such erosion or siltation. The Architectural Control 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.

Section 6. **Landscaping.** No construction or alteration of any structure shall take place without the prior written approval by the Architectural Control 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 desirable for security purposes in accordance with plans and specifications therefor approved by

the Architectural Control Committee. No contractor or builder shall erect on any Lot any temporary building or shed for use in connection with construction on such Lot without the prior written consent of the Architectural Control Committee.

Section 8. *Improvement of Lots.* All construction of dwellings, accessory structures and all other improvements on those Lots located in Whittingham Park Subdivision and described in Exhibit "A" 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) The portion of each Lot located in front of the residence constructed thereon shall be sodded with grass.
- (c) Concrete or 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, and there shall be no chain-link fence or fences or walls of any other material which the Architectural Control Committee determines to be incompatible with dwellings or other structures in Whittingham Park Subdivision.
- (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) Containers for garbage and other refuse shall be in screened sanitary enclosures; no incinerators for garbage, trash or other refuse shall be used.
- (h) No plumbing vent or heating vent shall be placed on the front side of any roof of any dwelling or accessory structure, unless required in order to meet the requirements of the Building Code of Fulton County,

Georgia, and any regulations applicable thereto. Any such vent shall be painted the same color as the roof on which it is placed.

(i) Any construction on a Lot shall be at 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.

(j) The enclosed, heated living area (exclusive of garages, carports, porches, terraces, bulk-storage and basement) of one-story single family detached dwellings shall contain not less than 2200 square feet. The enclosed, heated living area (exclusive of garages, carports, porches, terraces, bulk-storage and basement) of all one and one-half story, two-story or two and one-half story single family detached dwellings shall contain not less than 2400 square feet. No dwelling shall be constructed exceeding two and one-half stories in height on any Lot.

Section 9. *Signs.*

(a) No signs whatsoever (including, but not limited to commercial and similar signs) shall, without the prior written approval of plans and specifications by the Architectural Control Committee, 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) a sign indicating the builder of the residence on the Lot.

(iii) 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

(iv) direction signs for vehicular and pedestrian safety in accordance with plans and specifications approved by the Architectural Control 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 prior to permanent occupancy.

Section 10. *Setbacks.* In approving plans and specifications for any proposed Structure, the Architectural Control Committee may establish setback 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 its consistent with such setbacks. .

Section 11. **Fences.** No fence or wall of any kind shall be erected, maintained or altered on any Lot unless it shall be approved by the Architectural Control Committee. No chain link fencing shall be allowed.

Section 12. **Roads and Driveways.** No road or driveway shall be constructed or altered on any Lot without the prior written approval of the Architectural Control 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 Control Committee.

During approved construction, all vehicles in any way connected with such construction shall enter the Lot or Lots under construction only by the driveway approved in the plans by the Architectural Control Committee. In no event shall any driveways other than those approved by the Architectural Control Committee be constructed or used for temporary access to any Lot. All vehicles shall be parked at the Lot to avoid damage to trees, paving, curbs, gutters and any other improvements on the Lot.

Section 13. **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, used or maintained on the exterior of any Structure without the prior written approval of the Architectural Control Committee. In no event shall freestanding transmission or receiving towers be permitted.

Section 14. **Clotheslines.** No outside clotheslines shall be placed on any Lot. No hanging of any laundry within or outside the dwelling within the public view.

Section 15. **Recreational Vehicles, Trailers, etc.** The Architectural Control Committee, in reviewing the plans and specifications for 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 Control Committee pursuant to this Section 15 or within enclosures or behind screening erected in accordance with plans and specifications submitted to and approved by the Architectural Control Committee. While nothing contained herein shall prohibit the use of portable or temporary buildings for trailers as field offices by contractors during actual construction, the use, appearance and maintenance of such a building or trailer must be specifically approved by the Architectural Control Committee prior to its being moved onto the construction site.

Section 16. **Recreational Equipment.** No recreational and playground equipment shall be placed or installed on any Lot which is visible from the street abutting such Lot without the approval of the Architectural Control Committee.

Section 17. **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, 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 hereby or by applicable zoning law. The Architectural Control 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 completed final plans and specifications shall have been submitted to and approved by the Architectural Control Committee in accordance with the provisions of these covenants. Any accessory structure shall be constructed concurrently with or subsequent to the construction of the dwelling on the Lot on which such accessory structure is located.

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 animal 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 first been approved by the Architectural Control Committee.

Section 19. **Water Supply.** No individual water supply system shall be permitted on any Lot without the prior written approval of the Architectural Control Committee. If such approval is given, such system must be located, constructed and equipped in accordance with the 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 six inches or more in diameter at a point two 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 Control Committee unless located within ten feet of the approved site for a dwelling or within the right-of-way of driveways or walkways. Excepted herefrom shall be damaged or dead trees and trees which must be removed due to an emergency.

Section 21. **Screening.** All equipment, trash containers and wood piles shall be kept screened by adequate planting or fencing so as to be concealed from view

from all other Lots or from all public rights-of-way. Said screening or fencing shall be approved by the Architectural Control Committee prior to installation.

Section 22. **Commercial Vehicles.** No panel, commercial, or tractor truck shall be habitually parked in driveways or over-night on streets in front of any Lots as no Lot shall be sued for any commercial, business or professional purpose.

Section 23. **Inoperable Vehicles.** Any vehicle which is inoperable shall be towed away at the expense of the owner of the Lot on which said vehicle sits.

Section 24. **Hobbies or Activities.** The pursuit of hobbies or activities, including, without limiting the generality of the foregoing, the assembly or disassembly of motor vehicles or other mechanical devices which might tend to cause disorderly, unsightly, or unkept conditions shall not be undertaken on or in any structure, yard area of a Lot, in any driveway, garage or other place where such activity is visible from any street.

Section 25. **Parking.** Adequate off-street parking shall be provided for each Lot. No vehicle shall be parked on any street overnight except in the case of an emergency, but in no case for more than seventy-two (72) hours.

ARTICLE IX **Insurance**

The Board, or its duly authorized agent, shall obtain such insurance 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 or the Architectural Control Committee 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 or by the Architectural Control Committee 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 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

written notice of such violation or breach. The right of abatement means the right of the Architectural Control 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. Such Owner shall be personally liable to the Architectural Control Committee and Association for any and all costs and expenses incurred in enjoining and/or removing any construction or improvements, which costs shall be added to and become part of the assessment attributable to Lots owned by such Owners.

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 extended for successive periods of ten (10) years each, upon the vote of at least two-thirds (2/3) of the Owners at the time of the expiration of the initial period, or of any extension period.

Section 5. **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 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. **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:

Chatham Holdings, Inc. 10095 Houze Road, Suite 200, Roswell, Georgia 30076, or at such different address as disclosed in a written notice of change of address furnished to all Owners. Notices to Builder shall be in writing and shall be addressed to: Janet Ricker Builder, Inc., 100 Johnson Ferry Road, Suite 155-B, Marietta, Georgia 30068, or at 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 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 7. **Amendment.** This Declaration may be amended unilaterally at any time and from time to time by Developer (i) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith; (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (iii) if such amendment is required 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; or (iv) if such amendment is necessary to enable any governmental agency, such as the Veterans Administration, or reputable private insurance company to insure mortgage loans on the Lots subject to this Declaration; provided, however, any such amendment shall not make any substantial changes in any of the provisions of this Declaration. Further, this Declaration may be amended unilaterally at any time and from time to time by the Developer for any other reason which the Developer in its sole discretion deems appropriate until such time as ninety (90%) percent of the Lots to be developed or constructed on the Property have been sold by the Developer. At such time as ninety (90%) percent of the Lots to be developed or constructed on the Property have been sold by the Developer, 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 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. **No Liability.** Developer has used its best efforts and acted with due diligence in connection with the preparation and recording of this Declaration to ensure that each Owner has the right and power to enforce the terms and provisions hereof against every other Owner. In the event this Declaration is unenforceable by an Owner or any other person for any reason whatsoever, Developer shall have no liability of any kind as a result of such unenforceability, and each Owner, by acceptance of a deed conveying a Lot, acknowledges and agrees that Developer shall have no such liability.

BK 21061 PG 213

IN WITNESS WHEREOF, Developer has caused this Declaration to be executed on the day and year first above written.

DEVELOPER:
CHATHAM HOLDINGS CORPORATION



Sheri A. Holmes
Witness

BY: J. David Chatham Pres.
J. DAVID CHATHAM, President

[CORPORATE SEAL]

Joyce C. Stephens
Notary Public

Joyce C. Stephens
Notary Public, Fulton County, Georgia
My Commission Expires September 17, 1999

Builder Consent and Subordination

The undersigned Builder hereby acknowledges and consents to the foregoing Declaration of Covenants, Conditions, Restrictions and Easements for Whittingham Park and agrees that its rights under the Contract are subject and subordinate thereto.

This 3rd day of ~~April~~ ^{June}, 1996.

BUILDER:

JANET L. RICHER BUILDER, INC.

Sheri A. Holmes
Witness

BY: Janet L. Richer Whitehead
JANET L. RICKER, President

[CORPORATE SEAL]

Joyce C. Stephens
Notary Public

Joyce C. Stephens
Notary Public, Fulton County, Georgia
My Commission Expires September 17, 1999



BK 21061 PG 214

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lots 187 and 188 of the 1st District, 2nd Section, of Fulton County, Georgia, containing 14.2396 acres, and being more particularly described as follows:

BEGINNING at an iron pin found at the common corners of Land Lots 184, 187, 183 and 188 of said district, section and county; running thence North 00 degrees 37 minutes 40 seconds East, 964.97 feet to an iron pin found on the dividing line between Land Lots 184 and 187; running thence South 87 degrees 10 minutes 06 seconds East, 541.30 feet to an iron pin set; running thence South 36 degrees 39 minutes 37 seconds East, 106.12 feet to a point, said point also being the northerly corner of Tract "B" as shown on said survey; running thence South 49 degrees 35 minutes 32 seconds West, 408.63 feet to a point; running thence along an arc of a curve 77.58 feet, said curve being subtended by a chord having a bearing of South 46 degrees 24 minutes 43 seconds East and a distance of 77.27 feet to a point; running thence South 55 degrees 18 minutes 06 seconds East, 116.75 feet to a point, said point also being the southerly corner of Tract "B"; running thence North 36 degrees 09 minutes 32 seconds East, 374.04 feet to a point; running thence South 36 degrees 39 minutes 37 seconds East, 131.50 feet to an iron pin set; running thence South 71 degrees 12 minutes 05 seconds West, 110.00 feet to an iron pin found; running thence South 14 degrees 28 minutes 25 seconds East, 857.50 feet to an iron pin found on the right-of-way of Hardscrabble Road (based on a 100-foot right-of-way); running thence along said right-of-way South 54 degrees 59 minutes 20 seconds West, 49.95 feet to a point; running thence North 24 degrees 42 minutes 54 seconds West, 17.76 feet to a point; running thence North 14 degrees 30 minutes 18 seconds West, 218.06 feet to an iron pin set; running thence North 89 degrees 50 minutes 00 seconds West, 761.82 feet to the point of BEGINNING.

Deed Book 55859 Pg 473
Filed and Recorded Feb-17-2016 02:57pm
2016-0114086
Real Estate Transfer Tax \$0.00
Cathelene Robinson
Clerk of Superior Court
Fulton County, Georgia

Return to: Moore & Reese, LLC
2987 Clairmont Road Suite 350
Atlanta, Georgia 30329
Attention: Mindy C. Waitsman

STATE OF GEORGIA
COUNTY OF FULTON

Cross Reference:
Deed Book: 21061
Page: 194

**AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR WHITTINGHAM PARK**

WHEREAS, a Declaration of Covenants, Conditions, Restrictions and Easements for Whittingham Park was recorded on June 13, 1996, in Deed Book 21061, Page 194, et seq., Fulton County, Georgia land records (hereinafter referred to as the "Original Declaration") as may be amended; and

WHEREAS, Article X, Section 4 of the Original Declaration provides that the duration of the covenants and restrictions contained in the Original Declaration will expire at the end of twenty (20) years from the date the Original Declaration is recorded unless the covenants and restrictions are extended for successive periods of ten (10) years each upon the vote of at least two-thirds of the Owners at the time of the expiration of the initial period, or of any extension period; and

WHEREAS, Article X, Section 7 of the Original Declaration provides that at such time as ninety (90%) percent of the Lots to be developed or constructed on the Property have been sold by the Developer, 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; and

WHEREAS, members of the Association holding 75% of the Owners of Lots have signed an Agreement approving this Amendment to change Article X, Section 4 of the Declaration; and the Developer no longer owns any property that is subject to the Declaration; and

WHEREAS, these amendments do not alter, modify, change or rescind any right, title, interest or privilege held by any first mortgage holder on any Lot; provided, however, if a court of competent jurisdiction determines that these amendments do so without such first mortgage holder's consent, then these amendments shall not be binding on the first mortgage holder so

involved, unless it consents hereto; and if such consent is not forthcoming, then the provisions of the Original Declaration prior to these amendments shall control with respect to the affected first mortgage holder;

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

1.

Article X, Section 4 of the Original Declaration is hereby amended by deleting it in its entirety and replaced with the following paragraph:

Section 4. Duration

The covenants and restrictions of this Declaration shall run with and bind the real property in the Community perpetually to the extent provided in the O.C.G.A. Section 44-5-60.

IN WITNESS WHEREOF, the undersigned officers of the Whittingham Park Homeowners Association, Inc. hereby certify that the above Amendment to the Declaration of Covenants, Conditions, Restrictions and Easements for Whittingham Park was duly approved by written agreement executed by the required percentage of the Association's membership, with all required notices duly given. Said written agreements are maintained in the official records of the Whittingham Park Homeowners Association, Inc.

This 30 day of JANUARY, 2016.

WHITTINGHAM PARK HOMEOWNERS ASSOCIATION, INC.

By: [Signature]
President

Attest: [Signature]
Secretary

Sworn before me this 30 day of Jan, 2016.

[Signature]
Witness

[Signature]
Notary Public

My Commission Expires: 03/10/2019
[NOTARY SEAL]

