

Return to:
John R Moore
5304 Saville Drive
Acworth, GA 30101

DECLARATION OF PROTECTIVE COVENANTS FAYETTE COUNTY, GA.

FILED & RECORDED

FOR

'01 JUN 1 AM 11 39

MAGNOLIA PARK OFFICES

SHEILA STUDDARD, CLERK

THIS DECLARATION is made on the date set forth below by Magnolia Park Ventures, Inc. a Georgia Corporation ("Declarant").

WITNESSETH

WHEREAS, Magnolia Park Owners Association, Inc. is the owner of the real property described in Article II, Section 1 of this Declaration.

WHEREAS, Declarant desires to subject the real property described in Article II, Section 1 to the provisions of this Declaration to create a office community as defined herein;

NOW, THEREFORE, Declarant declares that, subject to the provisions of this Declaration, the real property described in Article II, Section 1 of this Declaration, including the improvements constructed or to be constructed thereon shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens, set forth in this Declaration, which are for the purpose of protecting the value and desirability of, and which shall run with the land and the title to, the real property new or hereafter made subject to this Declaration, and shall be binding on all persons having any right, title, or interest in all or any portion of the real property subject to this Declaration, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall inure to the benefit of all owners of the property subject to this Declaration.

Article I
Definitions

Unless the context shall prohibit, certain words used in this Declaration shall be defined as set forth in Exhibit "A", attached to and made a part of this Declaration.

Article II
Property Subject To This Declaration

Section 1. Property Hereby Subjected to this Declaration. The real property which is, by the recording of this Declaration, subject to the covenants and restrictions set forth in this Declaration is the real property described in Exhibit "B", attached and made a part of this Declaration.

THIS DECLARATION DOES NOT AND IS NOT INTENDED TO CREATE A CONDOMINIUM REGIME SUBJECT TO THE GEORGIA CONDOMINIUM ACT, O.C.G.A., 44-3-70, ET SEQ., OR A PROPERTY OWNERS' DEVELOPMENT SUBJECT TO THE GEORGIA PROPERTY OWNERS' ASSOCIATION ACT, O.C.G.A., 44-3-220, ET SEQ.

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Table of Exhibits

<u>Exhibit</u>	<u>Name</u>
A"	Definitions

Article III
Association, Membership and Voting Rights

Section 1. Membership. Every person who is the record owner of a fee interest in any Lot that is subject to this Declaration shall automatically be a member in the Association. Membership shall not include Persons who hold a security interest only and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one membership per Lot. In the event of multiple Owners of a Lot, votes and rights of use and enjoyment shall be as provided in this Declaration and in the Bylaws. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a member or the member's spouse, but in no event shall more than one (1) vote be cast nor one office held for each Lot owned.

Section 2. Voting. Members shall be entitled to one vote for each Lot owned. When more than one Person hold an ownership interest in any Lot, the vote for such Lot shall be cast as those Owners decide and instruct the Secretary prior to any meeting. If the Secretary is not instructed, the Lot's vote shall be suspended in the event more than one Owner of a Lot attempts to cast it.

Article IV
Assessments

Section 1. Purpose of Assessment. The Board shall have the power to levy assessments as provided herein. The amount of such assessments and the time and manner of payment, shall be fixed by resolution of the Board. Assessments shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of Lots, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

Section 2. Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Lot, by acceptance of a deed to the Lot, whether or not stated in the deed, covenants and agrees to pay to the Association: (a) common assessments or charges; (b) special assessments; (c) specific assessments, including water assessments and market standard maintenance fund assessments provided for herein; and (d) for the first purchaser of each Unit from Declarant, an initial capital contribution equal to \$200.00 plus such Unit's allocated portion of the anticipated charges for all insurance purchased by the Association in accordance with this Declaration for the first year of its operation.

All assessments, together with late charges, interest (not to exceed the maximum legal rate), costs, and reasonable attorney's fees actually incurred shall be; (a) a charge on the land and a continuing lien upon the Lot against which each assessment is made from the time the sums become due and payable; and (b) the personal obligation of the Person who is the Owner of the Lot at the time the assessment becomes due. The grantee of each Owner shall be jointly and severally liable for the portion of an assessment as is due and payable at the time of transfer of the Lot. However, the liability of a grantee for the unpaid assessments of an Owner shall not apply to any first Mortgage holder taking title however, any first mortgage holder who takes title through foreclosure proceedings or by deed in lieu of foreclosure shall be liable for all assessments due after the date of the foreclosure.

The Association shall, within five (5) days after receiving a written request and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association certify the status of assessments on a Lot shall be binding upon the Association as of the date of issuance.

Except for specific assessments or as otherwise provided herein, assessments shall be levied equally on all office lots within the community based upon square foot of office space and shall be due monthly. The initial charge per square foot of office shall be \$1.20 per square foot annually.

Section 3. Computation of Annual Assessment. At least thirty (30) days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated common expenses of the Association during the coming fiscal year. The budget shall include a capital contribution establishing a reserve fund in accordance with a budget separately prepared.

The common assessment to be levied against each Lot for the coming year shall be set at a level which is reasonably expected to produce total revenue to the Association equal to the total budgeted common expenses, including reserves. In determining assessments, the Board shall take into account the number of Lots subject to assessment on the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year. So long as the Declarant owns any property subject to this Declaration, on an annual basis, the Declarant may elect, but shall not be obligated, to reduce the assessment for any fiscal year by payment of subsidy. However, any Declarant subsidy shall be conspicuously disclosed as a line item in the income portion of the common expense budget. If the Declarant elects to pay a subsidy, the amount of the subsidy shown on the budget shall be an estimate only and the Declarant shall only be obligated to fund such subsidy to the extent of any actual operating deficit. The payment on a subsidy in one year shall under no circumstances obligate the Declarant to continue payment of a subsidy in future years. The Declarant's option to subsidize the assessment may be satisfied in the form of cash, or by "in kind" contributions of services or materials, or a combination of these.

The Board shall deliver or mail a copy of the common expense budget and notice of the amount of the assessment for each Lot to each Owner at least thirty (30) days prior to the beginning of the fiscal year. The budget and assessment shall become effective unless disapproved at a meeting by a Majority of the total Association vote and the Declarant (so long as the Declarant owns any property subject to this Declaration). there shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Owners as provided in the Bylaws. The petition must be presented to the Board within ten (10) days of delivery of the notice of assessments.

Notwithstanding the above, in the event the proposed budget is disapproved or the Board fails to prepare and distribute the budget for any year, then, until such a budget is prepared and distributed, the budget in effect for the immediately preceding year shall continue for the current year.

Section 4. Special Assessments. In addition to the other assessments authorized herein, the Association may levy special assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Special assessments must be approved by Owners holding at least two-thirds (2/3) of the votes present in person or by proxy at a duly called meeting held for such purpose and the Declarant (so long as the Declarant owns any property subject to this Declaration). Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

Section 5. Lien for Assessments. All assessments levied against any Lot, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, shall be secured by a lien on the Lot in favor of the Association from the time the assessment becomes due and payable. The Association shall have the right, but not the obligation to evidence the existence of the lien by filing a notice of lien in the Fayette County, Georgia, records. The lien shall be superior to all other liens and encumbrances on the Lot, except for (a) liens for ad valorem taxes; or (b) liens for all sums unpaid on a first Mortgage or on any Mortgage to Declarant duly recorded in the Fayette County, Georgia, records.

All Persons acquiring liens or encumbrances on any Lot after this Declaration has been recorded, other than as provided above, shall be deemed to consent that their liens or encumbrances, shall be inferior to future liens for assessments, whether or not prior consent is specifically set forth in the instruments creating their liens or encumbrances.

Section 6. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments or installments of assessments which are not paid when due shall be delinquent. Any assessment or installment delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the

Board may from time to time determine, which shall not exceed ten (10%) percent of the assessment payment. The Association shall cause a notice of delinquency to be given to any Owner who has not paid within ten (10) days following the due date. If the assessment is not paid when due, a lien shall attach and, in addition, the lien shall include the late charge, interest at a rate not to exceed the highest rate allowed under Georgia law, and all late charges from the date first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. The existence of the lien may, but is not required to be, evidenced by the filing of a notice of lien in the Fayette County, Georgia, records. If the assessment remains unpaid after sixty (60) days, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the lien. The lien provided for in this Article 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 on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the Lot.

No Owner may waive or otherwise exempt himself or herself from liability for assessments, by abandoning the Lot or in any other manner. The obligation to pay assessments is a separate and independent covenant on the part of each Owner and no reduction of any assessment shall be claimed or allowed by reason of (a) any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or the Bylaws, (b) for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or (c) from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

All payments shall be applied first to costs and attorney's fees, then to late charges, then to interest and then to delinquent assessments.

Section 7. Date of Commencement of Assessments. Assessments shall commence as to a Lot on the first day of the month following the conveyance of the Lot to a Person other than (a) the Declarant or (b) a builder or developer who purchases the Lot for purposes of construction a office and reselling the Lot and office. Except as set forth in Section 9 of this Article, neither the Declarant, nor a builder or developer who purchases a Lot for the purpose of construction of an office and resale of the Lot and office, shall be responsible for the payment of any type of assessment on any Lot it owns unless and until the office is occupied by any person. Assessments shall be due and payable in a manner and on the schedule that the Board of Directors provides. Lots which have not been conveyed as provided above shall not be subject to assessment. The first annual common assessment shall be adjusted according to the number of months then remaining in that fiscal year.

Section 8. Specific Assessments. The Board shall have the power to specifically assess specific Lots pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expense, including an expense for which the Board has not previously exercised its authority under this Section. Fines levied pursuant to Article XII, Section 1 hereof and the costs of maintenance performed by the Association which the Owner is responsible for under Article V, Sections 1 and 2 hereof shall be specific assessments.

The Board shall specifically assess each individual Lot for the following expense or items:

(a) Water Charges. If more than one but less than all Lots are served by a single water meter, then the Board shall specifically assess such Lots for water charges based on such meter. In such offices, water charges for each such meter will be applicable to the Lots served by that meter. Each Lot served by a meter shall be assessed and pay the Association an equal prorated portion of water charges on that particular meter. The Board either may assess such charges against the Owners after receipt of invoices for meter service from the water provider, or budget charges on an annual basis within sixty (60) days after the

end of each fiscal year. Based on such annual adjustment, the Board may allocate any surplus to the Owners or assess the Owners for any deficiency.

(2) at the direction of the Lot Owner for maintenance, repair or improvements within the office on the Lot.

The Board may also specifically assess Lots for the following Association expenses, except for expenses related to maintenance or repair of the Common Property:

(1) Expenses of the Association which benefit less than all of the Lots in the Community may be specifically assessed equitably among all of the Lots which are benefited according to the benefit received.

(2) Expense of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be assessed equitably among all Lots according to the benefit received.

(3) Expenses occasioned by the conduct of the Owner or any resident or guest of the Owner of any Lot.

Section 9. Declarant Assessments. Notwithstanding Section 7 of this Article, so long as the Declarant has the right to appoint the officers and directors of the Association under Article III, Section 2 of the Bylaws, the Declarant may annually elect either to pay any assessments due on its Lots in the same amount as are payable by the Owners of all Lots or to pay to the Association the difference between the amount of assessments collected on all other Lots subject to assessment and the amount of actual expenditures required to operate the Association during the fiscal year, so long as whichever method chosen by the Declarant is sufficient to at least fund the operating deficit of the Association. Unless the Declarant otherwise notifies the Board of Directors in writing at least sixty (60) days before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. The Declarant's obligations hereunder may be satisfied in the form of cash, or by "in kind" contributions of services or materials, or a combination of these.

Article V Maintenance Responsibility

Section 1. Association's Responsibility. The Association shall maintain, keep in good repair and, in the Board's discretion, improve the Common Property. This maintenance shall include, without limitation, maintenance, repair, and replacement subject to any insurance then in effect, of all landscaping grass areas, paving and other improvements situated on the Common Property. The Association shall also maintain and keep in good repair all water and sewer pipes or facilities which serve more than one (1) Lot, whether located within or without the Lot's boundaries, to the extent that such pipes and facilities are not maintained by public, private, or municipal utility companies.

The Association shall also maintain and keep in good repair, as a Common Expense paid from the general annual assessment fund, the Area of Common Responsibility, which shall be deemed to include the following portions of offices and Lots: (1) all roods (limited to roof decking, sheathing and shingles or other covering and surface materials), gutters and downspouts on the offices; (2) all visible exterior building surfaces of the offices, including painting of exterior doors and door and window frames, but excluding window screens, hardware and glass and doors, door frames and hardware; and (3) all landscaping on the Lots.

The Association also may, but shall not be required to, maintain, repair and replace, as an individual Owner expense, all other portions of the offices on the Lots, including, but not limited to: (1) HVAC or similar equipment located outside the office; (2) all doors, including screen and storm doors, hinges door frames and hardware which are part of the entry system (except for painting the exterior surfaces of exterior doors and doors frames); (3) hose bibs contained in exterior walls of office; (4) lighting fixtures pertaining to a particular office and being located outside an entryway; (5) window screens, window frames and glass (except for painting the exterior surface of window frames, as necessary); (6)

office foundations and footings, including waterproofing; and (7) pipes which serve only one Lot whether located within or without the Lot's boundaries. Maintenance or repair provided by the Association on behalf of the Lot Owner hereunder shall be specifically assessed against the Lot Owner. Notwithstanding the above, the Board, in its discretion, may require the Lot Owner to perform required maintenance or repair of these individual Owner expense items, rather than perform the work as an Association and assess the Owner the costs thereof. The Association shall not be responsible or liable to any person for the condition of the interior of the office or for some or for the marketability, suitability or use of the office.

In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether located within or without the Community, where the Board has determined that such maintenance would benefit the Community.

If the Board determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association, is caused through the willful or negligent act of an Owner, his or her family, guests, lessees, or invitees, and is not completely covered or paid for by insurance, then the Association may perform the maintenance, repair or replacement at the expense of the Owner, and all costs shall be added to and become a part of the assessment obligation of the Owner and shall become a lien against the Lot.

The Association shall perform all maintenance in a manner consistent with the Community-Wide Standard. The association shall not be liable for injury or damage to person or property caused by the elements or by the Owner of any Lot, or any other person, or resulting from utility, rain, snow or ice which may leak or flow from any portion of the driveways or roadways or from any pipe, drain, sanitary sewer lines, water lines, conduit, appliance or equipment which the Association is responsible to maintain hereunder as provided for and in accordance with Article V hereof. The Association shall not be liable to the Owner of any Lot or such Owner's Occupant, guest, or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any Lot or Lots or portions thereof within the Community irrespective of whether that portion of the Lot is maintained by the Association. The association shall not be liable to any Owner, or any Owner's Occupant, guest or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Paragraph where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities.

The Association shall repair incidental damage to any Lot resulting from performance of work which is the responsibility of the Association. In performing its responsibilities hereunder, the Association shall have the authority to delegate to such persons, firms or corporations of its choice, such duties as are approved by the Board of Directors.

Section 2. Owner's Responsibility. Except as provided in Section 1 above, all maintenance of the Lot and all structures and other improvements on the Lot shall be the sole responsibility of the Owner, who shall maintain the Lot in a manner consistent with the Community-Wide Standard and this Declaration. To the extent not performed by the Association as either a Common Expense or individual Owner expense, each Owner, at his own expense, shall keep the interior and exterior of his office and the areas serving his Lot in good order, condition and repair and in a clean and sanitary condition, and shall do all redecorating and painting which shall be at any time necessary to maintain a good condition of such office and the areas reserved thereto. If the Board determines that a Lot is not maintained in a manner consistent with the Community-Wide Standard and this Declaration, then the Board may provide such repairs or maintenance as it deems appropriate and assess the cost thereof against the Owner, after written notice of the Association's intent to do so.

Subject to the maintenance responsibility herein provided, any maintenance or repair performed on or to a Lot by an Owner or Occupant shall be performed at the sole expense of such Owner or Occupant, and the Owner or Occupant shall not be entitled to reimbursement from the Association.

Each Owner shall also be obligated:

(1) To perform his or her responsibility in such manner so as not to unreasonably disturb other persons in other Lots.

(2) To promptly report to the Association or its agent any defect or need for repairs, for which the Association is responsible.

(3) Not to make any alterations in the portions of the Lot which are to be maintained by the Association or to remove any portion thereof or to make any additions thereto or do anything with respect to the exterior or interior of the Lot which would or might jeopardize or impair the safety or soundness of any Lot without first obtaining the written consent of the Board of Directors of the Association and all Lot Owners and Mortgages of the Lots affected, nor shall any Lot Owner impair any easement without first obtaining written consent of the Association and of the Lot Owner or Owners and their Mortgagees for whose benefit such easement exists.

(4) To pay for the cost of repairing, replacing or cleaning up any item which is the responsibility of the Lot Owner but which responsibility such Owner fails or refuses to discharge (which the Association shall have the right, but not the obligation, to do), or pay for the cost of repairing, replacing, or cleaning up any item which, although the responsibility of the Association, is necessitated by reason of the willful or negligent act of the Lot Owner, his or her family, tenants or guests, with the cost thereof to be added to and become part of the Lot Owner's next chargeable assessment.

Article VI Use Restrictions and Rules

Section 1. General. This Article sets out certain use restriction which must be complied with by all Owners and occupants of Lots. These use restrictions may only be amended in the manner provided in Article XII, Section 4, regarding amendment of this Declaration. In addition, the Board may, from time to time, without consent of the Owners, adopt, modify, or delete rules and regulations applicable to the Community. These rules shall be distributed to all Owners prior to the date that they are to become effective and after distribution shall be binding upon all Owners and occupants of Lots unless overruled or modified at an Association meeting by a Majority of the total eligible Association vote and the consent of Declarant (so long as the Declarant owns any property subject to this Declaration). Notwithstanding the above, until such time as one hundred (100%) percent of the Community has been developed and conveyed to purchaser in the normal course of development and sale, no rules and regulation which affect the Declarant may be adopted, modified, or deleted without the written consent of the Declarant.

Section 2. Office Use. Each Lot shall be used for business purposes only, and no commercial use, trade or business of any kind may be conducted in or from a Lot, except for the following:

Section 3. Signs. No sign or any kind shall be erected by a Lot Owner or occupant on the exterior of any office within the Community, except with the prior written consent of the Architectural Control Committee. Notwithstanding the foregoing, the Declarant and Board shall have the right to erect reasonable and appropriate signs, including a community billboard for placement of sales, or other notices permitted by the Board or Declarant. Additionally, Declarant shall be entitled to erect reasonable signs related to the construction and development of the Community during such activities. This Section shall not apply to any Person holding a Mortgage who becomes the Owner of any Lot as purchaser at a judicial or foreclosure sale conducted with respect to a first Mortgage. No advertising, directional or vendor signs shall be permitted within the Community except as authorized by the Declarant under Article XII, Section 13 of this Declaration.

Section 4. Recreational Vehicles and Trailers. No trailer, trailer-house, camper, boat or recreational vehicle (RV, motor home, etc.) shall be parked on any Lot, without the prior written consent of the Board. While nothing contained herein shall prohibit the use of portable or temporary building or trailers as field offices by contractors during construction of offices on Lots, the use, appearance and maintenance of such a building or trailer must be specifically approved by the Declarant or the Architectural Control Committee prior to its being moved onto the Community.

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Section 5. Parking. All vehicles shall be parked only in specifically designated parking spaces. No vehicles may be parked at any time on any portion of the Community so as to impair or impede access to or from the Community or to or from a Lot. The Board may adopt further regulations or restrictions on parking of vehicles, including limits on the number of permitted vehicles and prohibitions against commercial vehicles, trucks or other vehicles.

If a parked vehicle is blocking another vehicle or access to another Owner's or Occupant's Lot or office, is obstructing the flow of traffic, or other wise creates a hazardous condition, the Association, without notice to the owner or user of the vehicle, shall have the right to have such vehicle immediately towed. If a vehicle is towed in accordance with this Section, neither the Association nor any officer or agent of the Association shall be liable to any person for any claim of damage as a result of the towing activity.

Notwithstanding the foregoing, this Section shall not in any way serve to impede or prevent the right of access for ingress and egress purposes to and from the Community by any and all Owners, invitees, guests, occupants and licensees to utilize such portions of roadways or driveways located in the Community. The Board in its discretion reserves the right to promulgate and to adopt such other reasonable rules and regulations the Board deems necessary in order to enforce the provisions contained in this Section.

Section 6. Occupants and Guests Bound. All provisions of the Declaration, Bylaws, and of any rules and regulations, use restrictions or design guidelines adopted pursuant to the Declaration which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants of Lots and guests and invitees of occupants or Owners. The Owner shall be responsible for insuring that the occupant, and the guests, invitees and licensees of the Owner or the occupant strictly comply with all provisions of the Declaration, Bylaws, and any rules and regulations adopted by the Board. Fines may be levied against Owners or occupants. If a fine is first levied against an occupant and is not paid timely, the fine may then be levied against the Owner. Violation by occupants shall constitute a breach of the lease, rental agreement, authorizing termination and eviction or removal by the Owner, the rental management agent, and/or the Association, at the Owner's expense.

Section 7. Animals and Pets. No Owner, occupant or guest may keep any pets on any portion of the Property.

Section 8. Nuisance. It shall be responsibility of each Owner, occupant and guest to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Lot. No property within the Community shall be used, in whole or in part, for the storage of any property or thing that will cause the Lot to appear to be in a unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will discharge foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the surrounding property. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any property within the Community. There shall not be maintained any plants or animals or device or thing or any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community. Without limiting the generality of the foregoing, no horn, whistle, siren, bell, amplifier or other sound device, except for devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Lot unless required by law. However, any siren or device for security purposes shall contain a device which causes it to automatically shut off within fifteen (15) minutes.

Section 9. Subdivision of Lots and Outbuilding. No Lot shall be subdivided except with approval of Declarant and the Board. Declarant, however, hereby expressly reserves the right to replat any Lot (s) owned by Declarant. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations. No structure of a temporary the applicable subdivision and

other outbuilding shall be erected or used by any Owner or Occupant, except Declarant, on any portion of the Property, at any time, either temporarily or permanently, without the prior written consent of the Architectural Control Committee.

Section 10. Zoning Ordinances. Each Owner, occupant, guest, licensee or invitee of Owner expressly covenants, warrants and represents that they will comply with any and all applicable zoning regulations, whether such regulations or laws are currently in existence or adopted after the date hereof, and that under no circumstances shall such person or persons take any actions or fail to take any action, whether willfully, negligently or deliberately, which would result in a violation of an applicable zoning ordinance.

Section 11. Fences. No fence or fencing-type barrier of any kind shall be placed, erected, allowed, or maintained upon any portion of the Community, including any Lot, without the prior written consent of the Declarant or the Architectural Control Committee. The Architectural Control Committee may issue guidelines detailing acceptable fence styles or specifications.

Article VII

Withdrawal of Property; Conveyance of Common Area

Section 1. Withdrawal of Property. Declarant reserves the right to amend this Declaration unilaterally at any time, so long as it holds the power to appoint and remove members of the Board of Directors, without prior notice and without the consent of any Person, for the purpose of removing certain portions of the Community then owned by the Declarant or its affiliates from the provisions of this Declaration to the extent originally included in error or as a result of any changes whatsoever in the plans for the Community desired to be effected by the Declarant. It is the intention of Declarant to withdraw 2 outstanding parcels along Highway 54 totaling approximately 3 acres and including all lands zoned Commercial.

Section 2. Conveyance of Common Property by Declarant to Association. The Declarant may transfer or convey to the Association any personal property and any improved or unimproved real property, leasehold, easement, or other property interest which may be subjected to the terms of this Declaration. Such conveyance shall be accepted by the Association, and the property may be designated as Common Property to be maintained by the Association for the benefit of all or a part of its members. Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section.

Article VIII

Insurance; Repair and Reconstruction

Section 1. Insurance.

(a) The Board shall obtain insurance for all insurable improvements on the Common Property and blanket insurance for all improvements on Lots. This insurance shall include fire and extended coverage, including coverage for vandalism and malicious mischief and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

(b) The Board shall obtain a public liability policy applicable to the property for which the Association has maintenance responsibility, as provided in Article V, Section 1 hereof, covering the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents in their capacities as such, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall be in such amount as fixed from time to time by resolution of the Board.

(c) Premiums for all insurance obtained by the Association shall be a Common Expense. The policies may contain a reasonable deductible, and the amount thereof shall be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

(d) All such insurance coverage obtained by the Board shall be written in the name of the Association, as trustee, for the benefit of the Association and its Members. Such insurance shall be governed by the provisions hereinafter set forth:

(1) All policies shall be written with a company licensed to do business in Georgia.

(2) The Board shall be required to make every reasonable effort to secure insurance policies that will provide: (A) a waiver of subrogation by the insurer as to any claims against the Association, its officers, directors and manager, the Owners and their respective tenants, servants, agents, and guests; (B) a provision that no policy may be canceled, invalidated, suspended or subjected to nonrenewal on account of any one or more individual Owners; and (C) that no policy may be canceled or substantially modified or subjected to nonrenewal without at least thirty (30) day's prior written notice to the Association.

(e) In addition to the other insurance required by this Paragraph, the Board shall obtain a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds. The amount of fidelity coverage shall be determined by the Board using its best business judgment.

Section 2. Insurance Deductibles. In the event of an insured loss, any required deductible shall be considered a maintenance expense to be paid by the Person who would be responsible for such loss in the absence of insurance. If the loss affects more than one Lot or a Lot and the Common Property, the cost of the deductible may be apportioned and assessed equitably by the Board among the parties suffering loss in accordance with the total cost of repair, unless the insurance policy provides that the deductible will apply to each Lot separately. If any Owner or Owners fail to pay the deductible when required hereunder, then the Association can pay the deductible and assess the cost to the Owner pursuant to this Declaration; however, no Owner shall be assigned more than one thousand (\$1,000.00) dollars as the cost of the deductible for any one occurrence.

Section 3. Repair and Reconstruction. In the event of damage to or destruction of all or any part of the Community as a result of fire or other casualty, unless eighty (80%) percent of the Lot Owners, including the Owner or Owners of any damaged Lot or Lots, vote not to proceed with the reconstruction and repair of the structure, the Board or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the structure. In the event of substantial damage or destruction, each institutional holder of a first Mortgage shall be entitled to written notice of the damage, and nothing in these documents shall be construed to afford a priority to any Lot Owner with respect to the distribution of proceeds to any such Lot.

(a) Cost Estimates. After a fire or other casualty causing damage to the community, the Board shall obtain reliable and detailed estimates of the cost of repairing and restoring the structures (including any damaged Lot) to substantially the condition which existed before such casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Such costs may also include professional fees and premiums for such bonds as the Board determines to be necessary.

(b) Source and Allocation of Proceeds. If the insurance proceeds are not sufficient to defray the estimated costs of reconstruction and repair, as determined by the Board, or if at any time during the reconstruction and repair or upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, a special assessment shall be made against all of the Lot Owners without the necessity of a vote of the members. If after repair and reconstruction is completed there is a surplus of funds, such funds shall be common funds of the Association to be used as directed by the Board.

(c) Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the plans and specifications under which the Property was originally constructed, except where changes are necessary to comply with current applicable building codes or where improvements not in accordance with the original plans and specifications are approved by the Board. To the extent insurance

proceeds are available, the Association may reconstruct or repair owner improvements damaged as a result of fire or other casualty.

(d) Encroachments. Encroachments upon or in favor of Lots which may be created as a result of such reconstruction or repair shall not constitute a claim or basis for any proceeding or action by the Lot Owner upon whose property such encroachment exist, provided that such reconstruction was substantially accordance with the architectural plans under which the Property was originally constructed. Such encroachments shall be allowed to continue in existence for so long as the reconstructed building shall stand.

(e) Construction Fund. The net proceeds of the insurance collected on account of a casualty and the funds collected by the Association from assessments against Lot Owners on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair in the manner set forth in this Section to be disbursed by the Association in appropriate progress payments to such contractor (s), supplier (s), and personnel performing the work or supplying materials or services for the repair and reconstruction of the building as are designated by the Board.

Article IX Architectural Standards

Section 1. Architectural Control Committee. No exterior construction, addition, erection, or alteration shall be made upon any part of the Community unless and until plans and specifications showing at least the nature, kind, shape, height, materials, and location shall have been submitted in writing to and approved by the Architectural Control Committee ("ACC"). However, no approval shall be required for any construction, alteration or addition made by the Declarant. Until one hundred (100%) percent of the Community has been developed and conveyed to purchasers in the normal course of development and sale, the Declarant shall have the right to appoint all members of the ACC. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. After the Declarant's right to appoint has expired, the ACC shall be appointed by the Board.

Section 2. Architectural Standards and Procedures. The primary purpose of these architectural controls is to protect and preserve property values in the Community by maintaining architectural and aesthetic harmony and compatibility among the structures on the Lots in the Community.

In the event that the ACC fails to approve or to disapprove any application within forty-five (45) days after submission of all information and materials reasonably requested, the application shall be deemed approved. However no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with any published Design Guidelines unless a variance has been granted in writing by the Committee pursuant to Section 5 of this Article.

The ACC shall be the sole judge of the plans with regard to the requirements of this Article and may withhold approval for any reason, including purely aesthetic consideration. The ACC shall be entitled to stop any construction in violation of these restrictions. Any member of the Board or its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property to inspect for the purpose of ascertaining whether or not these restrictive covenants have been or are being complied with. Such Person (s) shall not be deemed guilty of trespass by reason of such entry. If an Owner does not comply with this Section, the Board may record in the appropriate land records a notice of violation naming the violating Owner, in addition to any other available remedies.

Section 3. Disclaimer. The ACC and the Board of Directors do not warrant or represent, that their decisions under this Article constitute, and their decisions shall not be interpreted as constituting, an approval as to compliance with any building code, regulation or ordinance, or any other code, regulation, ordinance or law, nor that their decisions under this Article reflect upon the structural integrity of any proposed alteration or improvement.

Section 4. No Waiver. The approval of the ACC of any proposals, plans and specifications, or drawings, shall not constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specification, drawings, or other matters later submitted for approval or consent.

Section 5. Variances.

(a) The ACC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) prevent the ACC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

(b) The architectural standards and their enforcement may vary from time to time. These variances shall not constitute a waiver by the ACC or the Board of the right to adopt and enforce architectural standards under this Article. No decision by the ACC or Board shall constitute a binding precedent with respect to subsequent decisions of the ACC or Board. However, nothing in this Article shall permit the ACC or the Board to enforce retroactively its architectural standards against a Lot Owner whose architectural change has been approved under the architectural standards of a previous ACC or Board.

Article X
Mortgage Provisions

The following provisions are for the benefit of holders of first Mortgages on Lots in the Community. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

Section 1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number) (therefore becoming an "eligible holder") will be entitled to timely written notice of:

- (a) any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such eligible holder.
- (b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within (60) days;
- (c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or
- (d) any proposed action which would require the consent of a specified percentage of Mortgage holders.

Section 2. Approval of Action. Unless two thirds (2/3) of the first Mortgagees and Owners other than the Declarant give their consent, the Association shall not;

- (a) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner;

(b) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Lots (the issuance and amendment of architectural standards, procedures, rules, and regulations or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this subsection;

(c) fail to maintain insurance, as required by the Declaration;

(d) partition or subdivide any Lot; or

(e) use hazard insurance proceeds for losses to any portion of Lot for other than repair, replacement or reconstruction of such portion of the Lot.

Nothing contained in this Section 2 shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration for any of the acts set out in this Section 2.

Section 3. Notice to Association. Upon request, each Lot Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

Section 4. Amendments by Board. Should the Federal Mortgage Association or the Federal Home Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

Section 5. Applicability of this Article. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or Georgia law for any of the acts set out in this Article.

Section 6. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

Article XI Easements

Section 1. Easements for Encroachment and Overhang. There shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered (in accordance with the terms of this Declaration). The easement shall be five (5) feet, as measured from any point on the common boundary between each Lot and adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point. However, an easement for encroachment shall not exist if the willful conduct by an Owner, tenant, or the Association caused the encroachment.

Section 2. Easements for Utilities. There is reserved to the Declarant and the Association blanket easements upon, across, above and under all property within the Community for access, ingress, egress, installation, repairing, replacing, and maintaining (a) all utilities serving the Community, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, (b) water runoff and storm drainage systems, and (c) any other services such as, but not limited to, a master television antenna system, cable television system, or security system which may be installed to serve the Community. It shall be expressly permissible for the Declarant, the Association, or the designee of either, to do or to authorize the installation, repairing, replacing, and maintaining of the wires, conduits, pipes, cables and other equipment related to providing any such utility or service. Should a party furnishing any such utility or service request a specific license or easement by separate recordable document, the Declarant, or Board, as applicable, shall have the right to grant such easement.

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Section 3. Easement for Entry. In addition to the right of the Board to exercise self-help as provided in Article XII, Section 2, the Board shall have the right, but not the obligation, to enter upon any property within the Community for emergency, security, and safety reasons. This right may also be exercised by the agents of the Association, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. The Board shall have the right to enter to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard if an Owner or occupant does not cure the condition after request by the Board.

Section 4. Easement for Maintenance and Inspection. Declarant expressly reserves a perpetual easement for the benefit of the Association across such portions of the Community, including the offices, determined in the sole discretion of the Association, as are necessary to allow for the maintenance and inspection of the Community and the offices required under Article V, including, without limitation an easement over Lots on which drainage, plumbing, sewer or other related pipes serving either the Community or an individual Lot are located, the wrought iron fence or any other fence is located on any and all roadways and driveways which serve each individual Lot and which provide access both for ingress and egress either to and from the Community or to and from a Lot. This maintenance shall be performed with a minimum of interference to the quiet enjoyment to Owners' property, reasonable steps shall be taken to protect the property, and damage shall be repaired by the Person causing the damage at its sole expense. The Association, on behalf of itself, its officers, directors and agents, shall have an easement across the Community and through all offices for inspection of offices, provision of common services, and performance of any maintenance and repair powers or responsibilities authorized under this Declaration.

Section 5. Easement for Ingress and Egress. Declarant expressly reserves a perpetual, blanket, reciprocal across easement for the benefit of the Declarant, the Association and all Owners, occupants, licensees, invitees, guests and tenants of Owners, over, under, upon, across and through all roadways and driveways located within the Community for the purpose of access, both ingress and egress for vehicular and pedestrian traffic either to and from the Community or to and from a Lot which shall be appurtenant to and shall pass with the title to the Lot.

Section 6. Easements for Use and Enjoyment. Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to his or her Lot, subject to the following provisions:

(1) the right of the Association to charge reasonable admission and other fees for the use of any portion of the Common Property, to limit the number of guests of Lot Owners and tenants who may use the Common Property, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, his or her family, tenants, guests, and invitees;

(2) the right of the Association to suspend the voting rights of an Owner and the right of an Owner to use the recreational facilities in the Property for any period during which any assessment against his or her Lot which is provided for herein remains unpaid and for a reasonable period of time for an infraction of the Declaration, By-Laws, or rules and regulations;

(3) the right of the Association to borrow money as may be set forth in the By-Laws; provided, however, the lien and encumbrance of any such mortgage given by the Association shall be subject and subordinate to any rights, interest, options, easements and privileges herein reserved or established for an Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, encumbering any Lot or other property located within the Property (Any provision in this Declaration or in any such Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, encumbering any Lot or other property located within the Property.); and

(4) the right of the Association to dedicate or transfer all or any portion of the Common Property subject to such conditions as may be agreed to by the members of the Association.

Any Lot Owner may delegate his or her right of use and enjoyment in and to the Common Property and facilities located thereon to the members of his or her family, his or her tenants and guests, and shall be deemed to have made a delegation of all such rights to the Occupants of his or her Lot, if leased or rented.

Article XII General Provisions

Section 1. Enforcement. Each Owner and every occupant of a Lot shall comply strictly with this Declaration, the Bylaws, the rules and regulations, as they may be lawfully amended or modified from time to time, and with any deed restrictions. The Board of Directors may impose fines or other sanctions, which shall be collected as provided for the collection of assessments. Failure to comply with this Declaration, the Bylaws or the rules and regulations shall be grounds for an action for damages or injunctive relief, or both, maintainable by the Board of Directors, on behalf of the Association, or by an aggrieved Owner in a proper case. Failure by the Association or any Owner to enforce any of the foregoing provisions shall not be a waiver of the right to enforce those provisions in the future.

Section 2. Self-Help. In addition to any other remedies, including the right to levy fines, the Association or its duly authorized agent shall have the power to enter upon a Lot to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates this Declaration, the Bylaws, or the rules and regulations. All costs of self-help, including reasonable attorney's fees actually incurred shall be assessed against the violating Lot Owner and shall be collected as provided for in the collection of assessments.

Section 3. Duration. The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent permitted by law. However, so long as Georgia law limits the period during which covenants restricting lands to certain uses may run, any provision of this Declaration affected by the law shall run with and bind the land so long as permitted by the law, after which time the provisions shall be automatically extended for successive periods of twenty (20) years, unless at least fifty-one (51%) percent of the record Owners execute an agreement to prevent renewal of the covenants and such agreement is recorded and an attorney's affidavit confirming ownership of the lots or such other requirements as provided in O.C.G.A. 44-5-60. A written instrument reflecting termination must be recorded within the year immediately preceding the beginning of any renewal period. Every purchaser or grantee of any interest (including, without limitation, a security interest) in any real property subject to this Declaration, by acceptance of a deed or other conveyance, agrees that provisions of this Declaration may be extended and renewed as provided in this Section.

Section 4. Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant: (a) if an amendment is necessary to bring any provision into compliance with any applicable governmental statute, rule, or regulation or judicial determination with which it is in conflict; (b) in an amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (c) if an amendment is required by an institutional or governmental lender or purchaser of mortgage loans to enable the lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or (d) if an amendment is necessary to enable any governmental agency or reputable private insurance company to insure or guarantee Mortgage loans on the Lots subject to this Declaration. However, any such amendment shall not adversely affect the title to any Owner's Lot unless the Lot Owner consents to the amendment in writing.

In addition to the above this Declaration may be amended upon the affirmative vote or written consent, or any combination of affirmative vote and written consent, of Owners holding at least two-thirds (2/3) of the total Association vote and the consent of the Declarant (so long as Declarant owns any property

subject to this Declaration). Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified in the amendment. No provision of the Declaration which reserves, grants, or exempts special rights or exemptions to the Declarant shall be amended without the Declarant's, prior written consent so long as the Declarant, owns any property in the Community.

In addition to the above, material amendments to this Declaration must be approved by Eligible Mortgage Holders who represent at least fifty-one (51%) percent of the votes of Lots that are subject to Mortgages held by Eligible Mortgage Holders. Notwithstanding the above, the approval of any proposed amendment by an Eligible Mortgage Holder shall be deemed implied and consented to if the Eligible Mortgage Holder fails to submit a response to any written proposal for an amendment within thirty (30) days after the Eligible Mortgage Holder receives notice of the proposed amendment sent by certified or registered mail, return receipt requested.

Notwithstanding the foregoing, the Board of Directors, without the necessity of a vote from the Owners, may amend the Declaration to comply with any applicable state, city or federal law, including but not limited to, compliance with applicable guidelines of the Federal National Mortgage Association, the Department of Office and Urban Development and the Veterans Administration.

Any action to challenge the validity of an amendment adopted under this Section must be brought within one (1) year of the effective date of such amendment. No action to challenge such amendment may be brought after such time.

Section 5. Security. The Association may, but shall not be required to, provide measures or take actions which directly or indirectly improve safety in the Community. However, each Owner, for themselves and their tenants, guests, licensees, and invitees acknowledge and agree that the Association is not a provider of security and shall have no duty to provide security for the Community. It shall be the responsibility of each Owner to protect his or her person and property, and all responsibility to provide security shall lie solely with each Owner. The Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness or security measures undertaken.

Section 6. Dispute Resolution. Any Owner or occupant must give written notice to the Board requesting a hearing with the Board and attend such hearing to discuss amicable resolution of any dispute before that Owner or occupant files any lawsuit against the Association, the Board, any director, or any agent of the Association. The Owner or occupant shall, in such notice and at the hearing, make a good faith effort to explain the grievance to the Board and resolve the dispute in an amicable fashion, and shall give the Board a reasonable opportunity to address the Owner's or occupant's grievance before filing suit. Upon receiving a request for a hearing, the Board shall give notice of the date, time and place of the hearing to the person requesting the hearing. The Board shall schedule this hearing for a date no less than seven (7) nor more than twenty-one (21) days from the date of receipt of the notice of hearing by the person requesting the hearing. In the Board's discretion, the Board may require that the dispute be submitted to mediation by an independent mediator.

Section 7. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

Section 8. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

Section 9. Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

Section 10. Perpetuities. If any of the covenants, conditions, restriction, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

Section 11. Indemnification. In accordance with the Georgia Nonprofit Corporation Code, and to the full extent allowed by Georgia law, the Association shall indemnify every person who was or is a party or who is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association), by reason of the fact that such person is or was serving as a director or officer of the Association, against any and all expenses, including attorneys' fees, imposed upon or reasonably incurred in connection with any action, suit, or proceeding, if such person acted in a manner reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Any indemnification shall be made by the Association only as authorized in a specific case upon a determination that indemnification of the person is proper under the circumstances.

Section 12. Construction and Sale Period. Notwithstanding any provisions contained in this Declaration, the Bylaws, Articles of Incorporation, rules and regulations, Design Guidelines, and any amendments, so long as there is development and construction related to the initial sale of offices constructed on Lots, it shall be expressly permissible for Declarant to maintain and carry on, upon such portion of the Community as Declarant may deem necessary, such facilities and activities as in the sole opinion of Declarant may be required, convenient, or incidental to Declarant's development, construction, and sales activities related to property described on Exhibit "B" to this Declaration, including, but not without limitation the following:

(a) the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the Community;

(b) the right to tie into any portion of the Community with driveways, parking areas and walkways.

(c) the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community.

(d) the right to carry on sales and promotional activities in the Community; and the right to construct and operate business offices, signs, construction trailers, residences, model residences, and sales offices. Declarant may use residences, offices, or other buildings owned, leased or rented by Declarant as model residences and sales offices and may also use recreational facilities available for use by the Community as a sales office without charge.

Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense. This Section shall not be amended without the Declarant's express written consent so long as the Declarant owns any property in the Community primarily for development and/or sale and/or has the right to appoint Association directors and officers.

Section 13. Contracts Executed During Declarant Control. All contracts or leases executed by or on behalf of the Association during the period in which the Declarant has the right to appoint the Directors and officers of the Association under the Bylaws shall contain a termination clause permitting the Association to terminate the contract or lease at any time, without penalty for cause, upon not more than thirty (30) days' written notice.

Section 14. Financial Review. A review of the accounts of the Association shall be made annually in the manner as the Board of Directors may decide; provided, however, after having received the Board's reviewed financial statement at the annual meeting, by a Majority of the Association vote present, or represented by proxy, the Owners may require that the accounts of the Association be audited as a common expense by a public accountant. Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs, such holder shall be entitled to receive a copy of an audited financial statement within ninety (90) days of the date of the request.

Section 15. Notice of Sale. If an Owner sells his or her Lot, the Owner shall give to the Association, in writing, the name of the purchaser of the Lot and such other information as the Board may reasonably require.

Section 16. Agreements. Subject to the prior approval of Declarant (so long as the Declarant owns any property subject to this Declaration) all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

Section 17. Implied Rights. The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it or reasonably necessary to effectuate the right or privilege.

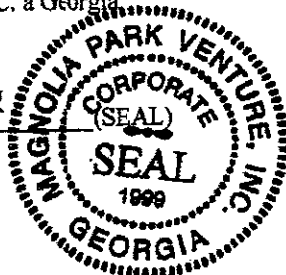
Section 18. Variations. Notwithstanding anything to the contrary contained in the Declaration, the Board of Directors, or its designee shall be authorized to grant individual variations from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Community.

IN WITNESS WHEREOF the undersigned have executed this instrument under seal this

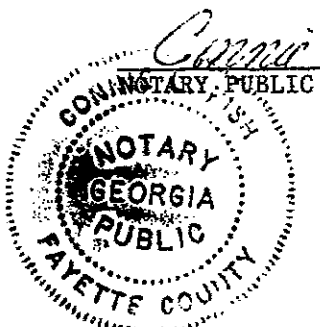
1 day of June 2001

MAGNOLIA PARK OFFICES, INC. a Georgia Corporation

By: John R. Moore
V. Pres.



Dorothy Goss
UNOFFICIAL WITNESS



Cornie L. Park
NOTARY PUBLIC

Notary Public, Fayette County, Georgia
My Commission Expires Oct. 8, 2002

Exhibit "B"

LEGAL DESCRIPTION LAND LOT 124 OF THE 5th DISTRICT

BEGINNING AT THE COMMON CORNER OF LAND LOTS 123, 124, 101, AND 103, 5th DISTRICT, FAYETTE COUNTY, GEORGIA, AT A 1" OF PIPE FOUND

THENCE North 88 degrees 58 minutes 27 seconds west for a distance of 1406.69 feet
THENCE North 00 degrees 27 minutes 49 seconds East for a distance of 608.28 feet TO THE SOUTH R/W OF GA. HWY 54
THENCE North ALONG SAID R/W 74 degrees 33 minutes 45 seconds East for a distance of 148.99 feet
THENCE South 15 degrees 32 minutes 05 seconds East for a distance of 28.80 feet
THENCE North 74 degrees 50 minutes 25 seconds East for a distance of 55.23 feet
THENCE North 15 degrees 44 minutes 06 seconds West for a distance of 28.96 feet TO THE SOUTH R/W OF SAID HWY
THENCE North 74 degrees 15 minutes 54 seconds East for a distance of 75.00 feet ALONG SAID R/W TO A POINT
THENCE South 15 degrees 44 minutes 04 seconds East for a distance of 189.58 feet
THENCE South 76 degrees 59 minutes 43 seconds East for a distance of 229.36 feet
THENCE South 47 degrees 15 minutes 27 seconds East for a distance of 141.73 feet
THENCE North 00 degrees 00 minutes 00 seconds East for a distance of 103.30 feet
THENCE South 88 degrees 57 minutes 50 seconds East for a distance of 10.00 feet
THENCE South 89 degrees 01 minutes 22 seconds East for a distance of 72.01 feet
THENCE South 89 degrees 05 minutes 14 seconds East for a distance of 210.02 feet
THENCE South 00 degrees 36 minutes 29 seconds West for a distance of 98.82 feet
THENCE South 89 degrees 05 minutes 12 seconds East for a distance of 80.00 feet
THENCE South 00 degrees 54 minutes 48 seconds West for a distance of 30.88 feet
THENCE South 84 degrees 50 minutes 07 seconds East for a distance of 416.73 feet
THENCE South 01 degrees 12 minutes 18 seconds West for a distance of 359.16 feet, TO AN 1" OF PIPE BEING THE POINT OF BEGINNING

Together with and subject to covenants, easements, and restrictions of record.

Said property contains 15.40 acres more or less.

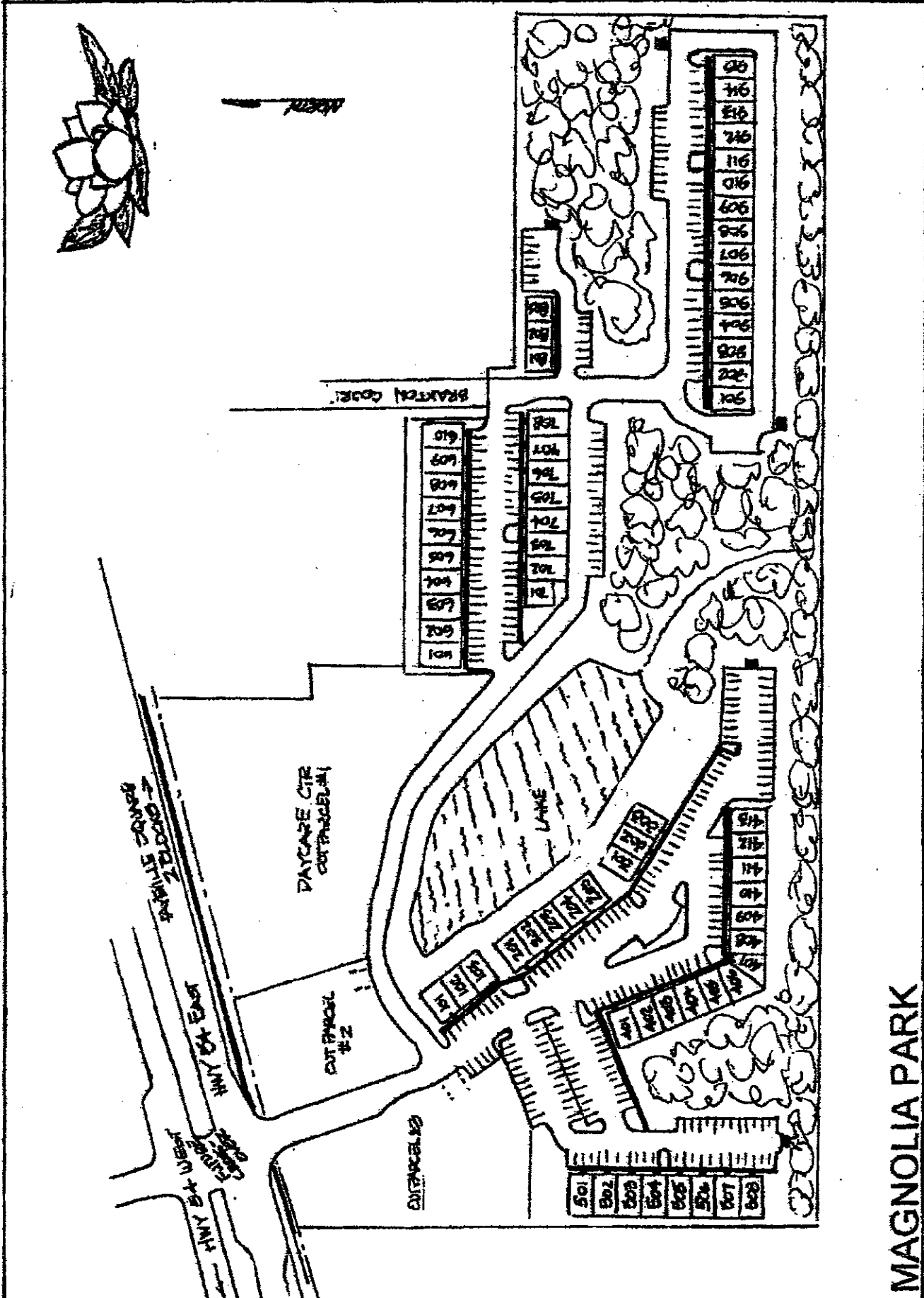


Exhibit "B"
MAGNOLIA PARK
500 Lanier Avenue West

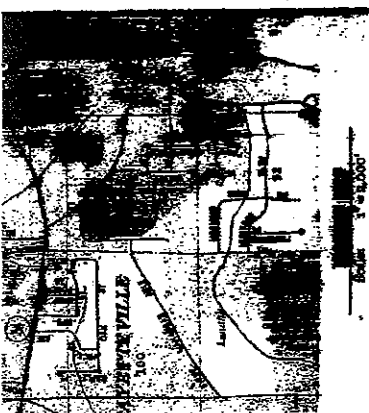
<u>Building #</u>	<u>Suite Numbers</u>	<u>Building</u>	<u>Suite Numbers</u>
1	101	5	501
1	102	5	502
1	103	5	503
		5	504
2	201	5	505
2	202	5	507
2	203	5	507
2	204	5	508
2	205		
		6	601
3	301	6	602
3	302	6	603
3	303	6	604
		6	605
4	401	6	606
4	402	6	607
4	403	6	608
4	404	6	609
4	405	6	610
4	406		
4	407	7	701
4	408	7	702
4	409	7	703
4	410	7	704
4	411	7	705
4	412	7	706
4	413	7	707
		7	708

Exhibit "B"

Building # Suite Numbers

8	801
8	802
8	803
9	901
9	902
9	903
9	904
9	905
9	906
9	907
9	908
9	909
9	910
9	911
9	912
9	913
9	914
9	915

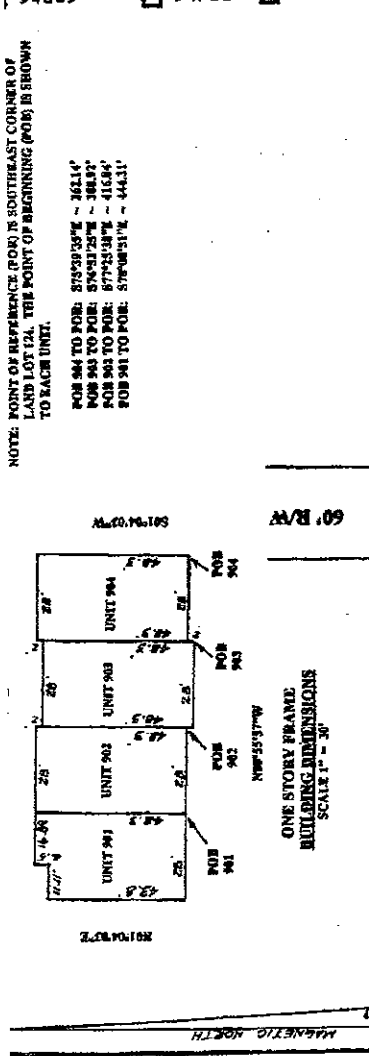
BOOK 1643 PAGE 186



WETLANDS SHOWN ON THIS PLAN ARE SUBJECT TO THE ADJUSTMENT OF THE A.S.M. COMD. OF ENGINEERS. LOT OWNER MAY BE SUBJECT TO PENALTY BY LAW FOR DISTURBANCE OF THESE WETLAND AREAS WITHOUT PERMIT OF AUTHORIZATION.

WETLAND AREA, 180 YEAR FLOOD IS L. 10. INVERTION, AND THE FLOODING IN THIS AREA IS SUBJECT TO THE ADJUSTMENT OF THE A.S.M. COMD. OF ENGINEERS. LOT OWNER MAY BE SUBJECT TO PENALTY BY LAW FOR DISTURBANCE OF THESE WETLAND AREAS WITHOUT PERMIT OF AUTHORIZATION.

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NOTE: POINT OF REFERENCE (POR) IS SOUTHEAST CORNER OF LAND LOT 12A. THE POINT OF BEGINNING (POB) IS 580 MM TO EACH UNIT.

POB 941 TO POR: 579°59'35"W ~ 361.14'
 POB 942 TO POR: 578°51'25"W ~ 381.57'
 POB 943 TO POR: 577°53'38"W ~ 416.84'
 POB 944 TO POR: 576°55'11"W ~ 444.11'

CONTRACTOR'S NOTE:

WETLAND AREA, 180 YEAR FLOOD IS L. 10. INVERTION, AND THE FLOODING IN THIS AREA IS SUBJECT TO THE ADJUSTMENT OF THE A.S.M. COMD. OF ENGINEERS. LOT OWNER MAY BE SUBJECT TO PENALTY BY LAW FOR DISTURBANCE OF THESE WETLAND AREAS WITHOUT PERMIT OF AUTHORIZATION.

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COUNTY OF FAYETTE

PLANNING DEPARTMENT

PLANNING PERMIT

OWNER: *Phig, Inc.*

DATE: 12-23-05

APPROVED: *[Signature]*

DATE: 12-23-05

CONTRACTOR'S STATEMENT

OWNER: *Phig, Inc.*

DATE: 12-23-05

CONTRACTOR'S STATEMENT

OWNER: *Phig, Inc.*

DATE: 12-23-05

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OWNER: *Phig, Inc.*

DATE: 12-23-05

CONTRACTOR'S STATEMENT

OWNER: *Phig, Inc.*

DATE: 12-23-05

FINAL PLAN OF UNIT 901-904

MAGNOLIA PARK

LAND LOT 12A - 5TH DISTRICT

FAYETTE COUNTY, GEORGIA

DATE: DECEMBER 13, 2005

SCALE: 1" = 60'

MADE BY

VAUGHN & DRAKE SURVEYORS, INC.

PLANNERS - SURVEYORS

P.O. BOX 703

STOCKBRIDGE, GA. 30281

OFFICE: (770) 474-1844

FAX: (770) 474-0166

CONTRACTOR'S STATEMENT

OWNER: *Phig, Inc.*

DATE: 12-23-05

CONTRACTOR'S STATEMENT

OWNER: *Phig, Inc.*

DATE: 12-23-05

CONTRACTOR'S STATEMENT

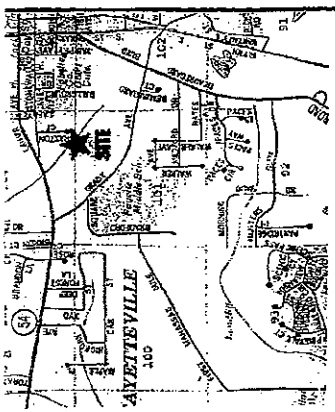
OWNER: *Phig, Inc.*

DATE: 12-23-05

CONTRACTOR'S STATEMENT

OWNER: *Phig, Inc.*

DATE: 12-23-05



NEIGHBORHOOD MAP
Scale: 1" = 500'

OWNER / DEVELOPER OF RECORD
JOHN MOORE
1000 N. W. 10TH ST.
N.W. NORTH BLDG. INC.
40 NORTH, GEORGIA 30001
(770) 774-4281

DATE: 3-21-05

OWNER: *John Moore*

FINAL PLAN APPROVAL
SUBJECT TO THE LAND WHICH IS THE PROPERTY OF THE CITY OF FAYETTEVILLE, GEORGIA. ALL THE REQUIREMENTS OF APPROVAL HAVING BEEN FULFILLED, THIS FINAL PLAN IS HEREBY APPROVED FOR THE CITY OF FAYETTEVILLE, GEORGIA.

CITY ENGINEER: *John Moore*

WETLANDS NOTE
WETLANDS SHOWN ON THIS PLAN ARE EITHER THE RESULT OF THE U.S. ARMY CORPS OF ENGINEERS' LOCAL FIELD OFFICE SURVEY OR THE U.S. ARMY CORPS OF ENGINEERS' DISTRICT OFFICE SURVEY. WETLAND AREAS WITHOUT PROPER AUTHORIZATION.

ADDITIONAL NOTE
THIS PLAN IS FOR THE PROPOSED CONSTRUCTION AND THE EXISTING WETLANDS ARE SHOWN FOR INFORMATION. THE PLANS MADE BY INTEGRATED ENGINEERING & ENGINEERING DATED FEBRUARY 11, 2004 FOR MAGNOLIA PARK.

FINAL PLAN OF UNITS 406-413
MAGNOLIA PARK
LAND LOT 124 - 8TH DISTRICT
FAYETTEVILLE COUNTY, GEORGIA

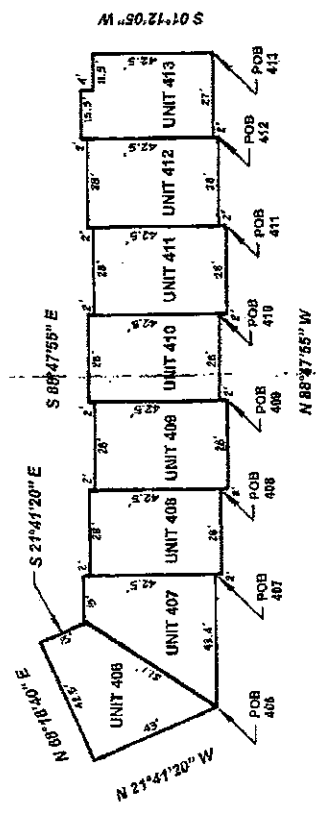
Date: MARCH 9, 2005 Scale: 1" = 80'
Made By
VAUGHN & DRAKE SURVEYORS, INC.
PLANNERS - SURVEYORS
P. O. BOX 703
STOCKBRIDGE, GA 30281
Office: (770) 474-1109
Fax: (770) 474-0186

FILED: 04/19/2005 AT 02:34:04 PM
FILED IN: 80-000000-0000
BY: [Signature]
CLERK OF COURT

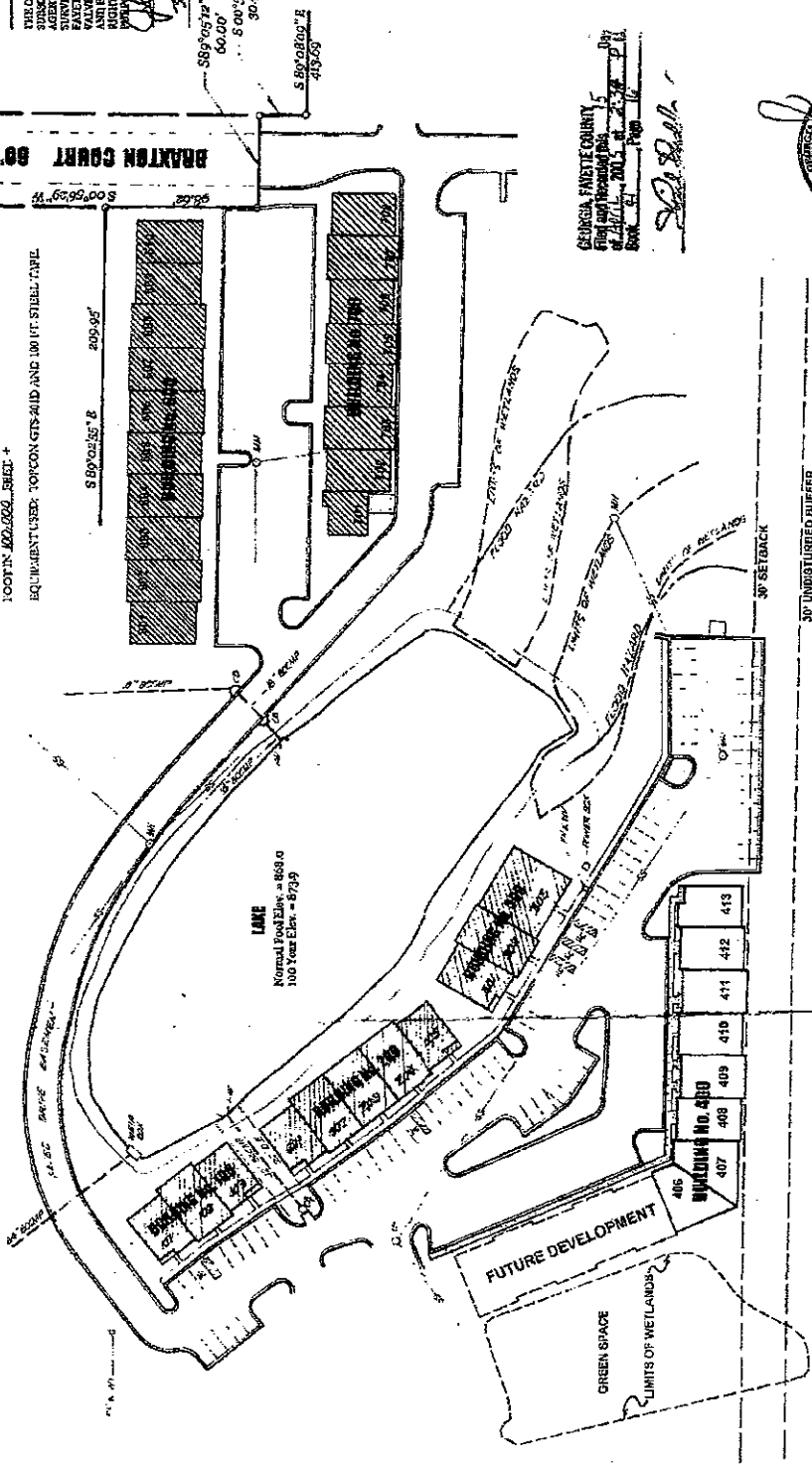
PK 16

Note: Point of Reference (POR) is Southeast corner of Land Lot 124.
The Point of Beginning (POB) is shown to each unit.
POB 406 to POR: S 85°49'32" E ~ 1123.87'
POB 407 to POR: S 85°33'04" E ~ 1855.58'
POB 408 to POR: S 85°34'24" E ~ 1058.52'
POB 409 to POR: S 85°36'48" E ~ 1030.45'
POB 410 to POR: S 85°23'38" E ~ 1802.61'
POB 411 to POR: S 85°24'48" E ~ 974.54'
POB 412 to POR: S 85°11'31" E ~ 948.71'
POB 413 to POR: S 84°57'43" E ~ 919.50'

CLOSURE STATEMENT
THE FIELD DATA UPON WHICH THIS PLAN IS BASED HAS A CLOSE VERIFICATION OF THE FOOTING, 2 1/2" IRLI, AND AN ADJUSTED BEARING AND DISTANCE. THIS PLAN HAS BEEN CALCULATED AND IS FOUND TO BE ACCURATE WITHIN ONE FOOT IN 100,000 FEET.



ONE STORY FRAME BUILDING DIMENSIONS
Scale: 1" = 30'



IN ANY PORTION OF THIS PROPERTY LIE WITHIN AN "EPA" IDENTIFIED FLOOD HAZARD AREA AS SHOWN ON THE FLOOD HAZARD MAP, SUBJECT TO THE 1994 FLOOD HAZARD ACT, GEORGIA.

IT IS HEREBY CERTIFIED THAT THIS PLAN, STRIKE AND CORRECT AND WAS PREPARED FROM AN ACTUAL SURVEY OF THE PROPERTY MADE BY VAUGHN & DRAKE SURVEYORS, INC. AND THAT THE PLANS HEREIN ARE ACCURATE AND CORRECTLY SHOW THE LOCATION, SIZE, TYPE AND BOUNDARIES OF ALL BUILDINGS AND AREAS THEREON. THE SURVEY WAS MADE BY VAUGHN & DRAKE SURVEYORS, INC. ON 3/10/05.

DATE: 3-10-05

