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GARY BELL
CLERK OF SUPERIOR COURT, LLC
PO BOX 2943
TALLASSEE, GA 30120

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BARTOW COUNTY

**DECLARATION OF COVENANTS, RESTRICTIONS
AND EASEMENTS FOR
*THE DERBY***

RECORDED AT DEED BOOK _____, PAGE _____,
BARTOW COUNTY, GEORGIA RECORDS.

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DECLARATION OF COVENANTS, RESTRICTIONS
AND EASEMENTS FOR
THE DERBY

TABLE OF CONTENTS

		Page Number
ARTICLE I	DEFINITIONS.....	2
1.01	Association.....	2
1.02	Board.....	2
1.03	By-Laws.....	2
1.04	Commencement Date.....	2
1.05	Common Property.....	2
1.06	Declarant.....	2
1.07	Development-Wide Standard.....	2
1.08	Lot.....	3
1.09	Member.....	3
1.10	Membership.....	3
1.11	Owner.....	3
1.12	Property.....	3
1.13	Residence.....	3
1.14	Restrictions.....	3
1.15	Structure.....	3
1.16	Subdivision.....	4
ARTICLE II	COMMON PROPERTY	4
2.01	Conveyance of Common Property.....	4
2.02	Right of Enjoyment.....	4
2.03	Rights of the Association.....	5
2.04	Conveyance of Common Property by Declarant to Association.....	6
2.05	Types of Common Property.....	6
2.06	Delegation of Use.....	6
2.07	Maintenance.....	6
ARTICLE III	THE DERBY AT ALFORD HOMEOWNERS ASSOCIATION.....	7
3.01	Purposes, Powers and Duties.....	7
3.02	Organization.....	7
3.03	Membership in the Association.....	7
3.04	Legal and Accounting Services.....	7
3.05	Manager.....	7
3.06	Property Services.....	7
3.07	Other Services and Property.....	7

3.08	Contracts.....	8
3.09	Property Ownership.....	8
3.10	Maintenance.....	8
3.11	Street Lighting.....	8
3.12	Indemnification.....	8
3.13	Voting Rights.....	8
3.14	Board of Directors.....	9
3.15	Suspension of Membership.....	9
3.16	Termination of Membership.....	9
3.17	Voting Procedures.....	9
3.18	Control by Declarant.....	9
ARTICLE IV	ASSESSMENTS.....	10
4.01	Covenant for Assessments and Creation of Lien and Personal Obligation.....	11
4.02	Purpose of Assessment.....	11
4.03	Accumulation of Funds Permitted.....	12
4.04	Annual Assessment.....	12
4.05	Special Assessments for Capital Improvements.....	12
4.06	Assessment Procedure.....	12
4.07	Uniform Rate of Assessment.....	13
4.08	Contribution by Declarant.....	13
4.09	Effect of Nonpayment of Assessments.....	13
4.10	Certificate of Payment.....	13
4.11	Approval by Declarant.....	13
4.12	Specific Assessments.....	13
ARTICLE V	GENERAL COVENANTS AND RESTRICTIONS.....	14
5.01	Application.....	14
5.02	Restriction of Use.....	14
5.03	Resubdivision of Property.....	14
5.04	Creek, Tributary, or Drainage Feature Obstructions or Alterations.....	14
5.05	Maintenance of Retention Ponds.....	14
5.06	Maintenance of Lawns, Plantings and Improvements.....	15
5.07	Temporary Buildings.....	15
5.08	Signs.....	15
5.09	Dwelling Sites.....	16
5.10	Identification of Lots.....	16
5.11	Fuel Tanks.....	16
5.12	Prohibited Activities.....	16

5.13	Utility Lines.....	16
5.14	Antennae, Etc.....	17
5.15	Clotheslines, Garbage Cans, Etc.....	17
5.16	Window Materials.....	17
5.17	Stables.....	17
5.18	Maintenance.....	17
5.19	Non-Discrimination.....	17
5.20	Animals.....	18
5.21	Solid Waste.....	18
5.22	Nuisances.....	18
ARTICLE VI EASEMENTS, ZONING AND OTHER RESTRICTIONS.....		18
6.01	Easements.....	18
6.02	Easement Area.....	19
6.03	Entry.....	19
6.04	Zoning and Private Restrictions.....	19
ARTICLE VII ENFORCEMENT.....		19
7.01	Right of Enforcement.....	19
7.02	Right of Abatement.....	19
7.03	Specific Performance.....	19
7.04	Collection of Assessments and Enforcement of Lien.....	20
7.05	No Waiver.....	20
ARTICLE VIII DURATION AND AMENDMENT.....		21
8.01	Duration.....	21
8.02	Amendments by Declarant.....	22
8.03	Amendments by Association.....	22
ARTICLE IX ANNEXATION.....		23
ARTICLE X MISCELLANEOUS.....		23
10.01	No Reverter.....	23
10.02	Severability.....	23
10.03	Headings.....	24
10.04	Gender.....	24
10.05	Notices.....	24
10.06	No Liability.....	24
10.07	Insurance.....	24
ARTICLE XI MORTGAGEE PROVISIONS.....		25
11.01	Notices of Action.....	26

11.02	Special FHLMC Provision.....	26
11.03	No Priority.....	27
11.04	Notice to Association.....	27
11.05	Amendment by Board.....	27
11.06	Applicability of Article XII.....	27
11.07	Failure of Mortgagee to Respond.....	27

**DECLARATION
OF COVENANTS, RESTRICTIONS AND EASEMENTS
FOR THE DERBY**

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR **THE DERBY** is made this 7 day of Oct, 2004, by **ES - ALFORD, LLC**. (hereinafter referred to as Declarant).

BACKGROUND STATEMENT

Declarant is the owner of certain real property in Bartow County, Georgia, which is more particularly described on Exhibit "A", attached hereto and made a part hereof, and proposes to develop and subdivide said real property for residential purposes.

Declarant intends to develop on the real property described above, a development to be known as **THE DERBY** (hereinafter referred to as the Development or Subdivision). Declarant intends by this Declaration to impose mutually beneficial Restrictions under a general plan of improvement for the benefit of all owners of residential property within **THE DERBY**, the planned unit development made subject to this Declaration, by the recording of this Declaration and amendments thereto. Declarant desires to provide a flexible and reasonable procedure for the overall development of **THE DERBY**. Declarant also desires to establish a method of administration, maintenance, preservation, use and enjoyment of the property that is now or hereafter subjected to this declaration and certain other properties described in this Declaration.

Declarant has caused the Association (as hereinafter defined) to be formed as a non-profit civic organization to perform certain functions for the common good and general welfare of the Owners (as hereinafter defined).

Declarant hereby declares that all of the real property described above shall be held, sold and conveyed subject to this Declaration of Covenants, Restrictions and Easements, which is for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property (as hereinafter defined). The Covenants, Restrictions and Easements set forth herein shall run with the Property, and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, and shall, subject to the limitations herein provided, inure to the benefit of each Owner, his heirs, grantees, distributees, successors and assigns and to the benefit of the Association.

**ARTICLE I
DEFINITIONS**

The following words, when used in the Declaration of Covenants, Restrictions and Easements, shall have the following meanings:

1.01 ASSOCIATION. "Association" means The Derby Homeowners Association, Inc. (a non-profit, nonstock, membership corporation organized under the Georgia Non-profit Corporation Code), its successors and assigns.

1.02 BOARD. "Board" means the Board of Directors of the Association.

1.03 BY-LAWS. "By-Laws" means the By-Laws of the Association.

1.04 COMMENCEMENT DATE. "Commencement Date" means the date on which the first Residence is sold to a third party other than Declarant or the builder of such Residence.

1.05 COMMON PROPERTY. "Common Property" means all real property (together with any and all improvements now or hereafter located thereon) owned by the Association or in certain instances over which the Association has been granted permanent easements, for the common use and enjoyment of the Owners.

1.06 DECLARANT. "Declarant" means ES - Alford, LLC, a Georgia Limited Liability Company, and its successors-in-title and assigns, provided any such successor-in-title or assigns shall acquire for the purpose of development or sale all or any portion of the remaining undeveloped or unsold portions of the real property described in Exhibit "A", or the real property which may become part of the Development, and provided further, in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign is designated as the "Declarant" hereunder by the grantor of such conveyance, which grantor shall be the Declarant hereunder at the time of such conveyance; provided, further, upon such designation of successor Declarant, all rights and obligations of the former Declarant in and to such status as Declarant hereunder shall cease, it being understood that as to all of the property described in Exhibit "A", attached hereto, and which is now or hereafter subjected to this Declaration, there shall be only one person or legal entity entitled to exercise the rights and powers of the Declarant hereunder at any one time.

1.07 DEVELOPMENT-WIDE STANDARD. "Development-Wide Standard" shall mean the standard of conduct, maintenance or other activity generally prevailing in the Development. Such standard may be more specifically determined by the Board and by committees required or permitted to be established pursuant to the declaration and By-laws. Such determination, however, must be consistent with the Development-Wide Standard originally established by the Declarant.

1.08 LOT. "Lot" means any parcel of land shown upon a subdivision plat recorded in the Office of the Clerk of the Superior Court of Bartow County, covering any portion of the Property, provided, however, that no portion of the Common Property shall ever be a Lot except as provided in Section 2.05.

1.09 MEMBER. "Member" means any member of the Association.

1.10 MEMBERSHIP. "Membership" means the collective total of all Members of the Association.

1.11 OWNER. "Owner" means the record owner (including Declarant), whether one or more persons or entities, of a fee simple title to any Lot; provided, however, that where fee simple title has been transferred and is being held merely as security for the repayment of a loan, the person or entity who would own the lot in fee simple if such loan were paid in full shall be considered the Owner.

1.12 PROPERTY. "Property" means that certain real property hereinabove described together with such additional real property as may be subjected to the provisions of this Declaration in accordance with the provisions of Article X hereof.

1.13 RESIDENCE. "Residence" shall mean a structure situated upon a Lot intended for use and occupancy as a residence for a single family. Residence shall include all portions of the land (the Lot) owned as a part of the structure described above. A structure and the land owned as a part thereof (the Lot) shall not become a Residence until a certificate of occupancy shall have been issued by the appropriate governmental authorities as a pre-requisite to the occupancy of such Residence and until the Lot and structure located thereon shall have been conveyed to a third party other than the builder thereof.

1.14 RESTRICTIONS. "Restrictions" means all covenants, restrictions, easements, charges, liens and other obligations created or imposed by this Declaration.

1.15 STRUCTURE. "Structure" means:

(a) 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, shed, greenhouse or bathhouse, coop or cage, covered or uncovered patio, swimming pool, fence, curbing, paving, wall, tree, shrub (and all other forms of landscaping), sign, signboard, temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such lot;

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

(c) any change in the grade at any point on a Lot of more than six (6) inches, whether or not subsection (b) of this Section 1.15 applies to such change.

1.16 SUBDIVISION. "Subdivision" shall mean a portion of the Property which is subdivided for residential purposes as shown on a map or plat or record in the Plat Records of Bartow County, Georgia.

ARTICLE II COMMON PROPERTY

2.01 CONVEYANCE OF COMMON PROPERTY.

(a) The Declarant may from time to time convey to the Association or grant easements to the Association, at no expense to the Association and in accordance with this Section, real and personal property for the common use and enjoyment of the Owners (such real and personal property is hereinafter collectively referred to as "Common Property") and, to the extent set forth in this Declaration of Covenants, Restrictions, and Easements, the general public. The Association hereby covenants and agrees to accept from the Declarant all such conveyances of Common Property.

(b) It is contemplated by the Declarant that the Declarant will convey to the Association Common Property for scenic and natural area preservation and for general recreational use. Declarant may, at Declarant's sole discretion, modify, alter, increase, reduce and otherwise change the Common Property contemplated to be conveyed to the Association in accordance with this subsection (b) of this Section 2.01 at any time prior to conveyance of such common Property to the Association.

(c) In addition to the property described in subsection (b) of this Section 2.01, the Declarant may convey to the Association in accordance with this Section 2.01 such other real and personal property as the Declarant may determine to be necessary or proper for the completion of the Development.

(d) Notwithstanding any legal presumption to the contrary, the fee title to, and all rights in, any portion of the Property owned by the Declarant and designated as Common Property or designated for public use shall be reserved to the Declarant until such time as the same shall be conveyed to the Association or to any municipality or other governmental body, agency or authority.

2.02 RIGHT OF ENJOYMENT. Every Owner of a Residence shall have a right and easement to use and enjoy the Common Property, which right shall be appurtenant to and shall pass with the title to every Lot upon transfer; provided, however, that no Owner shall do any act which interferes with the free use and enjoyment of the Common Property by all other Owners. The Association may permit persons who are not Owners of Residences to use and enjoy part or all of the Common Property subject to such limitations, and upon such terms and conditions, as it may from time to time

establish. The right and easement of enjoyment granted or permitted by this Section 2.02 is subject to suspension by the Association as provided in Sections 2.03 (f) and 3.05.

2.03 RIGHTS OF THE ASSOCIATION. The rights and privileges conferred in Section 2.02 hereof shall be subject to the right, and where applicable, the obligation, of the Association, acting through the Board to:

(a) promulgate rules and regulations relating to the use, operation and maintenance of the Common Property;

(b) borrow money for the purpose of carrying out the activities of the Association, including the acquisition, construction, improvement, equipping and maintenance of Common Property, and in aid thereof to encumber by deed to secure debt, mortgage or other security interest any or all of the association's property, including Common Property and revenues from assessments, user fees and other sources; and provided, however, that, during the period when the Declarant has the right to appoint members of the Board, the Association shall not deed, grant or convey to anyone any mortgage, deed to secure debt or other security interest, on or in Common Property constituting real estate without approval by Declarant and a two-thirds (2/3) vote of the Members who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the By-Laws of the Association;

(c) grant easements or rights of way over Common Property to any municipality or other governmental body, agency or authority, to any quasi-public agency or to any utility company or cable television system;

(d) dedicate or transfer all or any part of the Common Property or interests therein to any municipality or other governmental body, agency or authority for such purposes and, subject to such provisions and conditions as may be agreed upon by the Association and such grantee, including a provision that such property or interest shall, if such dedication or transfer is approved by two-thirds (2/3) vote of the Members who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the By-Laws of the Association, cease to be subject to this Declaration or all or any part of the Restrictions while held by any such municipality or other governmental body, agency or authority.

(e) charge reasonable fees in connection with the admission to and use of facilities or services by Members and non-members; provided that in setting any such fee the Board may establish reasonable classifications which shall be uniform within each such class but need not be uniform between such classes;

(f) suspend, pursuant to Section 3.05, the voting rights of any Member and the right of enjoyment granted or permitted by Section 2.02;

(g) to sell, lease or otherwise convey all or any part of its properties and interests therein;

(h) enforce all applicable provisions of valid agreements of the Association relating to the Common Property or any part thereof; and,

(i) maintain any and all landscaping treatments previously installed by the Declarant, to the extent that such landscaping is not otherwise maintained by the appropriate county and/or municipal entity having jurisdiction over the roads for Bartow County, Georgia.

2.04 CONVEYANCE OF COMMON PROPERTY BY DECLARANT TO ASSOCIATION.

Declarant may transfer or convey to the Association any personal property and any improved or unimproved property, leasehold, easement or other property interest which is or may be subjected to the terms of this Declaration. Such conveyance shall be accepted by the Association, and the property shall thereafter be Common Property to be maintained by the Association for the benefit of all of its Members.

2.05 TYPES OF COMMON PROPERTY. At the time of the conveyance of any real property or grant of easement by Declarant to the Association to be used as Common Property, Declarant shall designate in the deed of conveyance or easement that such real property is to be Common Property, and further may designate in the deed of conveyance or easement the specific or general purpose or purposes for which such real property or any portion thereof may be used, and in such event, such real property or portion thereof shall not, without a two-thirds (2/3) vote of the Members of the Association, be used for any different purpose or purposes without the prior written consent of Declarant.

2.06 DELEGATION OF USE. Any Owner may delegate to the members of his family or his tenants who reside on a Lot, in accordance with the By-Laws, his right to use and enjoy the Common Property.

2.07 MAINTENANCE. The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair and replacement, subject to any insurance then in effect, of all landscaping and improvements situated on the Common Property. In addition, the Association shall maintain grass and other landscaping located along or in dedicated rights of way which were installed and maintained by Declarant, to the extent permitted by the applicable governmental authority. The foregoing maintenance shall be performed consistent with the Development-Wide Standard.

The Association shall also have the right, but not the obligation, to maintain and provide services for other property not owned by the Association whether located within or without the boundaries of the Community, and to enter into easements and covenants to share cost agreements regarding such property where the Board has determined that this would benefit the Owners.

ARTICLE III
THE DERBY AT ALFORD HOMEOWNERS ASSOCIATION, INC.

3.01 PURPOSES, POWERS AND DUTIES OF THE ASSOCIATION. The Association shall be formed as a non-profit, civic organization for the sole purpose of performing certain functions for the common good and general welfare of the people of the Development. The Association shall have no power or duty to do or perform any act or thing other than those acts and things which will promote in some way the common good and general welfare of the people of the Development. To the extent, and only to the extent, necessary to carry out such purpose, the Association (a) shall have all of the powers of a corporation organized under the Georgia Nonprofit Corporation Code and (b) shall have the power and duty to exercise all of the rights, powers and privileges and to perform all of the duties and obligations of the Association as set forth in this Declaration.

3.02 ORGANIZATION. The Declarant shall, at such time as Declarant deems appropriate, cause the formation and incorporation of the Association. The Association shall be a nonprofit corporation created for the purposes, charged with the duties and vested with the powers prescribed by law or set forth in its Articles and Bylaws or in this Declaration. Neither the Articles nor Bylaws for any reason shall be amended or otherwise changed or interpreted so as to be inconsistent with this declaration.

3.03 MEMBERSHIP IN THE ASSOCIATION. Every Owner shall automatically be a member of the Association and such membership shall terminate only as provided in this Declaration of Covenants, Restrictions and Easements. For purposes of voting, there shall be two (2) classes of Members as set forth in Section 3.03.

3.04 LEGAL AND ACCOUNTING SERVICES. The Association shall have the authority to retain and pay for legal and accounting services necessary or proper in the operation of the Association.

3.05 MANAGER. The Association shall have the authority to retain and pay for the services of a person or firm (the "Manager") to manage and operate the Association, including its Property to the extent deemed advisable by the Board. Additional personnel may be employed directly by the Association or may be furnished by the Manager. To the extent permitted by law, the Association and the Board may delegate any other duties, power and functions to the Manager. The Members of the Association hereby release the Association and the Members of the Board from liability for any omission or improper exercise by the Manager of any such duty, power or function so delegated.

3.06 PROPERTY SERVICES. The Association shall have the authority to pay for water, garbage removal, landscaping, gardening and all other utilities, services and maintenance for the Property of the Association; to maintain and repair easements, roads, roadways, rights-of-way, parks, median strips, sidewalks, paths, trails, ponds, lakes and other areas of the Property, as appropriate; and to own and operate any and all types of facilities for both active and passive recreation.

3.07 OTHER SERVICES AND PROPERTY. The Association shall have the authority to obtain and pay for any other property and services, and to pay any other taxes or assessments which the Association or the Board is required to secure or to pay for pursuant to applicable law, the terms of this Declaration or the Articles or Bylaws of the Association.

3.08 CONTRACTS. The Association shall have the authority to enter into contracts with Declarant and other persons on such terms and provisions as the Board shall determine, to operate and maintain any Common Area or to provide any service or perform any function on behalf of Declarant or any other person.

3.09 PROPERTY OWNERSHIP. The Association shall have the authority to acquire, own and dispose of all manner of real and personal property, whether by grant, lease, gift or otherwise

3.10 MAINTENANCE. The Association shall (1) maintain, repair and replace as necessary all landscaping, irrigation systems, streets and roadways, entrance signs and other Improvements within any right-of-way which is within or adjacent to the Property; and (2) maintain all Common Area dedicated to the Association for maintenance, by or with the consent of Declarant.

3.11 STREET LIGHTING. The Association shall pay for electrical service and for all other costs and expense necessary to operate and maintain any street lights which have not been accepted by a governmental entity for operation and maintenance and which are located within any right-of-way within or adjacent to the Property.

3.12 INDEMNIFICATION. The Association shall indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he is or was a director, officer, committee member, employee, servant or agent of the Association against expenses, including attorney's fees, reasonably incurred by such person in connection with such action, suit or proceeding if it is found and determined by the Board or a Court that such person (1) acted in good faith and in a manner reasonably believed to be in, or not opposed to, the best interests of the Association, or (2) with respect to any criminal action or its equivalent, shall not of itself create a presumption that the person reasonably believed to be in, or not opposed to, the best interests of the Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that such conduct was unlawful. The Board may purchase and maintain insurance on behalf of any person who is or was a director, officer, committee member, employee, servant or agent of the Association against any liability asserted against him or incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability hereunder or otherwise.

3.13 VOTING RIGHTS.

(a) Each Owner of a Residence, with the exception of Declarant, shall be a class A Member and shall be entitled to one (1) Class A Vote per Residence. Where such Owner is a group or entity other than one individual person, the vote on behalf of such Owner shall be exercised only by such individual person as shall be designated in a proxy instrument duly executed by or on behalf of such group or entity and delivered to the secretary of the Association.

(b) Declarant shall be the sole Class B Member and shall be entitled to three (3) votes for each Lot owned. Subject to the terms and conditions of subsection (c) of this Section 3.03, the Class B Membership shall cease and be converted to Class A Membership when the total number of votes outstanding in the Class A Membership equals the total number of votes outstanding in the Class B Membership.

3.14 BOARD OF DIRECTORS. The affairs of the Association shall be managed by a Board of Directors. The number of Directors and the method of election of Directors shall be set forth in the By-Laws of the Association.

3.15 SUSPENSION OF MEMBERSHIP. The Board may suspend the voting rights of any Member and the right of enjoyment of the Common Property of any person who:

(a) shall be subject to the Right of Abatement, as defined in Section 8.02, by reason of having failed to take the reasonable steps to remedy a violation or breach of the Restrictions within thirty (30) days after having received notice of the same pursuant to the provisions of Section 5.11, 6.14, or 8.02 hereof:

(b) shall be delinquent in the payment of any assessment levied by the Association pursuant to the provisions of Article IV hereof; or,

(c) shall be in violation of the rules and regulations of the Association relating to the use, operation and maintenance of Common Property. Such suspension shall be for the balance of the period in which said Member or person shall remain in violation, breach or default, as aforesaid, except that in the case of a violation described in this subsection (c) of this Section 3.05, the suspension may be for a period not to exceed 60 days after the cure or termination of such violation. No such suspension shall prevent an Owner's ingress and egress to and from his Lot.

3.16 TERMINATION OF MEMBERSHIP. Membership shall cease only when a person ceases to be an Owner.

3.17 VOTING PROCEDURES. The procedures for the election of Directors of the Association and the resolution of such other issues as may be brought before the membership of the Association shall be governed by this Declaration, the Georgia Nonprofit Corporation Code, the Articles of Incorporation of the Association, and the By-Laws of the Association, as each shall from time to time be in force and effect.

3.18 CONTROL BY DECLARANT.

(a) Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the Bylaws of the Association, Declarant hereby retains the right to appoint and remove any members of the Board of the Association and any officer or officers of the Association until such time as the first of the following events shall occur: (i) the expiration of ten (10) years after the date of the recording of this Declaration; (ii) the date upon which all of the Residences intended by Declarant to be a part of the Development have been conveyed by Declarant to Owners other than a person or persons constituting Declarant; or (iii) the surrender by Declarant of the authority to appoint and remove directors and officers by an express amendment to this Declaration executed and recorded by Declarant, provided, however, that the Owners shall be entitled to elect certain members of the Board of the Association in accordance with the terms of the By-Laws of the Association which shall not be removable by the Declarant acting alone.

(b) Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of this Section, such right shall automatically pass to the Owners, including Declarant if Declarant then owns one or more Lots; and a special meeting of the Association shall be called at such time. As such special meeting the Owners shall elect a new Board of Directors which shall undertake the responsibilities of the Board and Declarant shall deliver the books, accounts, and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period which Declarant has in its possession. Each Owner by acceptance of a deed to or other conveyances of a Lot vests in Declarant such authority to appoint and remove directors and officers of the Association as provided in this Section. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law and any other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

ARTICLE IV ASSESSMENTS

4.01 COVENANT FOR ASSESSMENTS AND CREATION OF LIEN AND PERSONAL OBLIGATION. Each owner of a Residence, jointly and severally, for himself, his heirs, distributees, legal representatives, successors and assigns, by acceptance of a deed for a Residence, whether or not the covenants contained herein shall be expressed in any such deed, hereby covenants and agrees as follows:

(a) to pay to the Association the annual assessments which may or shall be levied by the Association pursuant to this Declaration against all Residences owned by him;

(b) to pay to the Association any special assessments for capital improvements and other charges which may or shall be levied by the Association pursuant to this Declaration against all Residences owned by him;

(c) that there is hereby created a continuing charge and lien upon all Residences owned by him against which all such assessments are made to secure payment of such assessments and any interest thereon as provided in Section 4.09 hereof and costs of collection including reasonable attorneys' fees;

(d) that such continuing charge and lien on such Residence binds such Residence in the hands of the then Owner, and the Owner's heirs, devisees, legal representatives, successors and assigns. Such charge and lien is superior to any and all charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon such Lots whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, except (i) such liens for taxes or other public charges as are by applicable law made superior, and (ii) all deeds to secure debt given to secure a loan the proceeds of which are used (1) to purchase a Residence or Residences (together with any or all Structures which may from time to time be placed or located thereon), and (2) to finance the construction, repair or alteration of Structures.

(e) that no sale or transfer at foreclosure or in lieu of foreclosure shall relieve any Residence from liability for any assessment thereafter assessed;

(f) that all annual, special and specific assessments (together with interest thereon as provided in Section 4.09 of this Declaration and costs of collection including reasonable attorneys' fees) levied against any Residence owned by him during the period that he is an Owner shall be (in addition to being a continuing charge and lien against such Residence as provided in Section 4.01(c) of this Declaration) a personal obligation which will survive any sale or transfer of the Residence owned by him; provided, however, that such personal obligation for delinquent assessments shall not pass to an Owner's successor in title unless expressly assumed by such successor.

4.02 PURPOSE OF ASSESSMENT. The assessment levied by the Association shall be used exclusively for the purpose of providing for the common good and general welfare of the people of the new community of the Development, including, but not limited to, security, the acquisition, construction, improvement, maintenance and equipping of Common Property, the enforcement of the Restrictions contained in this Declaration, the payment of operating costs and expenses of the Association and the payment of all principal and interest when due on all debts owed by the Association.

4.03 ACCUMULATION OF FUNDS PERMITTED. The Association shall not be obligated to spend in any calendar year all the sums collected in such year by way of annual assessments or otherwise, and may carry forward, as surplus, any balances remaining; nor shall the Association be obligated to apply such surplus to the reduction of the amount of the Annual Assessments in any succeeding year, but may carry forward from year to year such surplus as the Board may deem to be desirable for the greater financial security of the Association and the effectuation of its purposes.

4.04 ANNUAL ASSESSMENT.

- (a) Beginning on the Commencement Date and continuing thereafter until January of the year immediately following the Commencement Date, each Residence shall be subject to an annual assessment of Two Hundred Dollars (\$200.00) per Lot. In the event that the Commencement Date falls on a day other than January 1, the annual assessment for such year shall be prorated so that each Owner pays all annual assessment proportional to the number of days remaining in the calendar year. The words Assessment Year as used herein shall mean the calendar year with the first Assessment Year commencing on January 1 of the year immediately following the Commencement Date. For so long as Declarant has the right to appoint and remove Directors and Officers of the Association, the annual assessment shall not be reduced below Two Hundred Dollars (\$200.00) without written consent of Declarant.
- (b) In addition to the \$200.00 annual assessment, each Residence shall be subject to an additional assessment equal to the pro-rata share of the property taxes for all common areas within the Subdivision.

- (c) Commencing with the first Assessment Year and continuing thereafter, the annual assessment may be increased at any time and from time to time during each Assessment Year not more than ten percent (10%) above the annual assessment for the previous Assessment Year without a vote of the Membership.
- (d) Commencing with the first Assessment Year and continuing thereafter, the annual assessment for each Assessment Year may at any time and from time to time be increased more than ten percent (10%) above the maximum annual assessment for the previous Assessment Year if such increase is approved by a two-thirds (2/3) vote of the Members of the Association who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the provisions of the By-Laws of the Association and this Declaration.

4.05 SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS. In addition to the annual assessments authorized by this Article IV, the Association may levy, in any Assessment year and with such frequency as the Association shall deem necessary, special assessments for the purpose of paying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement on the Common Property. Such special assessments may be levied by the Board in any Assessment Year without the approval of the Members, which special assessments in the aggregate do not exceed an amount equal to the annual assessment then in effect. Special assessments exceeding said amount shall require the approval of two-thirds (2/3) of the Members of the Association who are present in person or by proxy at a meeting of Members duly held in accordance with the provisions of the By-Laws of the Association and this Declaration.

4.06 ASSESSMENT PROCEDURE.

(a) The Board shall establish the annual assessment for each Assessment Year at an amount not in excess of the maximum annual assessment as determined by the provisions of this Article IV, and shall also establish the date during the Assessment Year on which the annual assessment shall be due and payable (such date is hereinafter referred to as the Due Date). The Board shall also establish an annual budget which shall list the estimated operating expenses and shall contain a reasonable amount to be set aside each year into a reserve allowance sufficient for reasonably anticipated future repair and replacement of the Common Property. The Board shall cause the Association to send to each Owner at least thirty (30) days in advance of the Due Date written notice setting forth the amount of the annual assessment and the Due Date. The annual assessment shall become due on the thirtieth (30th) day following such written notice or the Due Date, whichever is later. The Board may establish reasonable payment procedures to allow or require payment of the annual assessment in installments during the Assessment Year. The Board shall also establish payment procedures for payment of any special assessments for capital improvements which may be levied in accordance with the provisions of this Article IV.

(b) All Members of the Association shall be given written notice by the Board not less than thirty (30) nor more than sixty (60) days in advance of any meeting of the Members of the Association at which the Board shall propose taking action pursuant to Section 4.04(c) and Section 4.05 of this Article IV. Such written notice shall specify under which Section or Sections the Board will propose action. At such meeting, the presence of Members or of proxies entitled to cast fifty

percent (50%) of the total votes outstanding shall constitute a quorum. If the required quorum is not present at such meeting, a second meeting may be called by the Board subject to the same notice requirement, and the required quorum at such second meeting shall be thirty percent (30%) of the total votes outstanding. No such second meeting shall be held more than sixty (60) days following the first meeting.

4.07 UNIFORM RATE OF ASSESSMENT. Both annual and special assessments must be fixed at a uniform rate for all Residences.

4.08 CONTRIBUTION BY DECLARANT. For so long as Declarant has the authority to appoint and remove Directors and Officers of the Association, Declarant shall not be liable for the payment of any assessments. Provided, however, during said period Declarant shall advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for the reserve allowance), and the sum of annual, special and specific assessments collected by the Association in any Assessment Year, and such advances shall be evidenced by promissory notes from the Association to Declarant.

4.09 EFFECT OF NONPAYMENT OF ASSESSMENTS. Any Assessment which is not paid on or before the Due Date shall bear interest after the Due Date at the lower of the highest legal rate of interest which can be charged or the rate of eighteen percent (18%) per annum or at such rate as the Board may from time to time establish, provided, however, that in no event shall the Board have the power to establish a rate of interest in violation of the laws of the State of Georgia. In the event of default in the payment of any one or more installments of an assessment, the Board may declare any remaining balance of the assessment at once due and payable. In the event that an Owner shall fail to pay fully any portion of any assessment prior to the date on which payment is due, such unpaid portion (including any remaining balance declared immediately due and payable in accordance with the preceding sentence), together with interest and costs of collection including reasonable attorneys' fees, shall be a binding personal obligation of such Owner, as well as a lien on such Owner's Residence, enforceable in accordance with the provisions of this Declaration.

4.10 CERTIFICATE OF PAYMENT. Upon written demand by an Owner, the Association shall within a reasonable period of time issue and furnish to such Owner a written certificate stating that all assessments (including penalties, interest and costs, if any) have been paid with respect to any Lot owned by said Owner as of the date of such certificate, or that all assessments, interest and costs have not been paid, setting forth the amount then due and payable. The Association may make a reasonable charge for the issuance of such certificate. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser of, or lender on, the Lot in question.

4.11 APPROVAL BY DECLARANT. Notwithstanding anything to the contrary contained herein, no special assessment shall be made without approval of Declarant for so long as Declarant has the right to appoint officers and directors of the Association.

4.12 SPECIFIC ASSESSMENTS. The Board shall have the power to specifically assess 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

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 expenses, including an expense for which the Board has not previously exercised its authority under this Section. The Board may specifically assess Owners for the following expenses, except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association as provided herein:

(a) Expenses of the Association which benefit less than all of the Residences, which may be specifically assessed equitably among all of the Residences which are benefited according to the benefit received;

(b) Expenses incurred by the Association pursuant to Section 6.14 hereof; and,

(c) Reasonable fines as may be imposed in accordance with the terms of the Declaration and By-Laws.

ARTICLE V GENERAL COVENANTS AND RESTRICTIONS

5.01 APPLICATION. The covenants and restrictions contained in this Article VI shall pertain and apply to all Lots and to all Structures erected or placed thereon.

5.02 RESTRICTION OF USE. Lots may be used for single-family residences only and for no other purpose, provided that Declarant may operate a Sales Office and/or Model Home on a Lot or Lots designated by Declarant.

5.03 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 Homeowners Association for such split, division or subdivision. Notwithstanding the foregoing, nothing herein shall prevent Declarant or the Owners of any Lots from combining two or more Lots into one Lot for construction of a single Residence thereon; provided, however, that such combined Lot may not be subdivided thereafter; and, provided further, that the Owner of the Residence on such Lot shall be responsible for annual and special assessments based upon the number of Lots combined into one Lot.

5.04 CREEK, TRIBUTARY, OR DRAINAGE FEATURE OBSTRUCTIONS OR ALTERATIONS. No obstructions, (physical or visual) of any type, including, but not limited to, fences, dams and concrete walkways, shall be placed in, on, or across the bed of any creek, tributary, or drainage feature adjoining or running through any part of any Lot in the Subdivision, except by Declarant. Landscaping or any creek bed, tributary, or drainage feature shall be only upon written approval of the Homeowners Association.

5.05 MAINTENANCE OF RETENTION PONDS. Each individual homeowner is responsible for the general maintenance and upkeep of any retention pond located on the homeowner's property, at the expense of the individual homeowner. Examples of general maintenance and upkeep include, but are not limited to, grass cutting and maintenance of vegetation surrounding the pond and keeping the pond free of natural and/or foreign debris. The Derby at Alford Homeowners Association will be responsible for any major upkeep, maintenance and/or repairs to the retention ponds, at the expense

of the Homeowners Association. Examples of major upkeep, maintenance and repairs include, but are not limited to, maintenance of water flow in and out of the ponds, replacement of rip-rap or other major shoreline maintenance and any other damage related to forces such as flooding or drought. The Association reserves the right to recover maintenance and/or repair expenses from the homeowner, in the event it is determined that the homeowner is responsible for any major damage to the pond.

5.06 MAINTENANCE OF LAWNS, PLANTINGS AND IMPROVEMENTS.

(a) In the event the Owner of any Lot shall fail to maintain such Lot and the improvements situated thereon in an neat and orderly manner, the Association, acting on its own, its agents and employees, shall have the right to enter upon said Lot and to repair, maintain and restore the Lot and exterior of any and all buildings and other improvements erected thereon, all at the expense of the Owner.

(b) The Owner of any Lot containing a creek bed, tributary, or drainage feature shall maintain the creek bed, tributary, or drainage feature free of weeds and debris (without the removal of any natural flora or fauna) and, if the Owner shall fail to do so, the Association shall have the said area maintained at the expense of the Owner. Anything to the contrary contained in this paragraph notwithstanding, all creek bed, tributary, or drainage feature maintenance performed by an Owner, or by the Association, shall be performed in accordance with all pertinent and specifically applicable regulations and the ordinances of the appropriate governmental entity.

(c) All non-native plants, shrubs, trees, grass and landscaping on a Lot shall be maintained in a trimmed and neat condition at all times. In the event the Owner of a Lot fails to properly maintain such landscaping, the Association shall be entitled to do so, all at the Owner's expense.

5.07 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 therefore. Temporary structures necessary for storage of tools and equipment, and for office space for architects, builders and foremen during actual construction, may be maintained with the proper approval of Declarant. Such temporary structure shall be dismantled, removed, or otherwise destroyed after eighteen (18) months from the date of completion or placement of such structure.

5.08 SIGNS.

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

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

(ii) not more than one For Sale sign, such sign having a maximum face area of four square feet; provided that such sign may only be displayed in the front yard of a Lot; and, provided further, that if, at the time of any desired use of such sign, the Association is making For Sale signs available for the Owners' use, the signs made available by the Association must be used;

(iii) directional signs for vehicular or pedestrian safety in accordance with plans and specifications approved by the Homeowners Association; and

(iv) for rent signs are prohibited.

(b) In no event during approved construction of any Structure shall more than one job identification sign be approved by the Homeowners Association.

5.09 DWELLING SITES. Each single-family dwelling shall contain a minimum of two thousand (2000) square feet, square footage calculations shall be exclusive of open and closed porches, terraces, patios, balconies, driveways and garages. This requirement may only be waived by the Homeowners Association. The developer reserves the right to approve any building structure.

5.10 IDENTIFICATION OF LOTS. The house number for each single-family residence shall be located on a mailbox. Both the house number style and mailbox shall be uniform throughout the Subdivision and will be approved and provided by Declarant. Each individual Owner is responsible for the structural integrity, appearance and maintenance of their respective mailbox and house number.

5.11 FUEL TANKS. No butane or fuel tank (other than small tanks used for outdoor cooking) or other structure or facility for the storage of combustible fuels shall be placed or maintained on any Lot unless expressly authorized in writing by the Homeowners Association, in which case it shall be shielded from the view of any adjoining homesite or roadway.

5.12 PROHIBITED ACTIVITIES. No business, professional, commercial, or trade venture or activity provided will be permitted, provided, however, that model homes and/or sales offices may be constructed and maintained by the Declarant, its successors and assigns, in connection with the development of and the construction and sale of houses and Lots in the Subdivision. Subject to the prior written consent of the Homeowners Association, home offices to which the general public is invited, incidental to an Owner's business, may be maintained within such Owner's residence, so long as activities conducted in connection with such home offices do not become an annoyance or nuisance to the neighborhood, in the sole and absolute discretion of the Homeowners Association.

5.13 UTILITY LINES. No utility lines, including, but not limited to, wires, or other devices for the communication or transmission of telephone or cable television or any other type of line or wire shall be erected, placed or maintained anywhere in or upon any portion of the Property unless the same shall be constrained in conduit or cables installed and maintained anywhere in or upon any portion of the Property unless the same shall be underground or concealed in, under or on buildings or other Improvements as approved in writing by the Homeowners Association; provided, however, that no provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or other Improvements which have been previously approved in writing by the Homeowners Association. The installation for both temporary

and permanent utilities shall be subject to review and approval by the Homeowners Association.

5.14 ANTENNAE, ETC. No exterior television or radio antennae or satellite dish or receiver or solar equipment of any sort shall be placed, allowed or maintained upon any portion of a Structure or Lot without prior written approval by the Homeowners Association, except that one eighteen inch (18") or smaller receiver may be placed in a location approved by the Homeowners Association. No antennae shall be installed or used for the purpose of transmitting of electronic signals.

5.15 CLOTHESLINES, GARBAGE CANS, ETC. No outside clotheslines or similar outside clothes-drying structures will be allowed. Garbage cans and woodpiles shall be kept screened by adequate planting or fencing so as to conceal them from view by neighboring residences and streets, and may be maintained in the rear yard on a Lot only.

5.16 WINDOW MATERIALS. All windows on all Improvements in the Subdivision shall utilize only clear or lightly tinted, nonreflective glass

5.17 STABLES. Stables for the shelter of horses may be constructed on any Lot, and subject to the following conditions: All stables shall comply with all other restrictions, covenants, conditions and limitations on usage herein, provided for other Improvements in the Subdivision, except that, subject to Homeowners Association approval, stables may be constructed of materials other than masonry, if in the sole discretions of the Homeowners Association the quality of materials, design and method of construction is compatible in the Subdivision, or to be built in the Subdivision.

5.18 MAINTENANCE. Each Owner shall keep and maintain each Lot and Structure owned by him, as well as all landscaping located thereon, in good condition and repair, including, but not limited to (i) the repairing and painting (or other appropriate external care) of all Structures; (ii) the seeding, watering, and mowing of all lawns; and (iii) the pruning and trimming of all trees, hedges and shrubbery so that the same are not obstructive of a view by motorists or pedestrians of street traffic. Notwithstanding the foregoing, the maintenance required hereunder shall also extend from the boundary of a Lot to the curbing of the right-of-way bordering said Lot. If in the opinion of the Homeowners Association, any Owner shall fail to perform the duties imposed by this Section, the Homeowners Association shall notify the Association. If the Board shall agree with the determination of the Homeowners Association with respect to the failure of said Owner to perform the duties imposed by this Section, then the Board shall give written notice to the Owner to remedy the condition in question, setting forth in reasonable detail the nature of the condition and the specific action or actions needed to be taken to remedy such condition. If the Owner shall fail to take reasonable steps to remedy the condition within thirty (30) days after the mailing of said written notice by certified mail, then the Association shall have the Right of Abatement as provided in Section 8.02 hereof.

5.19 NON-DISCRIMINATION. No Owner or person authorized to act for an Owner shall refuse to sell or rent, after receiving a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the purchase or rental of any Lot to any persons because of race, color, religion, sex, age or national origin. Anything in this Declaration to the contrary notwithstanding, this covenant shall run with the land and shall remain in effect without any limitation in time.

5.20 ANIMALS. No agricultural animals may be kept on any Lot. 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 been approved by the Homeowners Association.

5.21 SOLID WASTE.

(a) No person shall dump rubbish, garbage, or any other form of solid waste on any Lot or on Common Property.

(b) Except during approved construction and as approved by the appropriate governmental authority, no person shall burn rubbish, garbage, or any other form of solid waste on any Lot or on Common Property.

(c) Except for building materials employed during the course of construction of any Structure approved by the Homeowners Association, no lumber, metals, bulk material or solid waste of any kind shall kept, stored, or allowed to accumulate on any Lot.

(d) If rubbish, garbage, or any other form of solid waste is to be disposed of by being collected on a regular and recurring basis, containers may be placed in the open on any day that a pick-up is to be made, in order to provide access to persons making such pick-up.

5.22 NUISANCES. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereof which may be or may become any annoyance or nuisance to the community. No exterior speakers, horns, whistles, bells, or other sound devices (other than security devices used exclusively for security purposes) shall be located, used or placed on any part of the. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other portion of the Property or to its occupants.

**ARTICLE VI
EASEMENTS, ZONING AND OTHER RESTRICTIONS**

6.01 EASEMENTS.

(a) Declarant hereby expressly reserves to Declarant, its successors and assigns forever, the right to create perpetual easements in, on, over and under any part of the Property owned by Declarant for any purpose which Declarant deems necessary, including, by way of example, and not limitation, the following:

(i) the erection, installation, construction and maintenance of wires, lines, conduits and poles and the necessary or proper attachments in connection with the transmission of electricity, telephone, cable television cables and other utilities and similar facilities;

(ii) the erection, installation, construction and maintenance of storm-water drains,

land drains, public and private sewers, irrigation systems, pipelines for supplying gas, water, and heat, and for any other public or quasi-public facility, service or function;

(iii) slope control purposes, including the right to grade and plant slopes and prevent the doing of any activity which might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow; and,

(iv) the planting or re-planting of hedges, shrubbery, bushes, trees, flowers and plants of any nature.

(b) No Owner shall have any right to use any easement created by the Declarant in, on or over any portion of the Property unless such easement has been assigned by the Declarant to the Association.

6.02 EASEMENT AREA. The words Easement Area as used herein shall mean those areas on any Lot or any other portion of the Property with respect to which easements are shown on a recorded deed or easement agreement or on any filed or recorded map or plat relating thereto.

6.03 ENTRY. Declarant and its employees, agents, successors and assigns, shall have the right at all reasonable times to enter upon all parts of each Easement Area for any of the purposes for which such Easement Area is reserved, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and the carrying out of such purposes, provided the same are done in accordance with the provisions of this Section. The Declarant and its employees, agents, successors and assigns shall be responsible for leaving each Lot in good condition and repair following any work or activity undertaken in an Easement Area pursuant to the provisions of Section 7.01.

6.04 ZONING AND PRIVATE RESTRICTIONS. None of the covenants, restrictions or easements created or imposed by Declarant shall be construed as permitting any action prohibited by applicable zoning laws, or by the laws, rules or regulations of any governmental body. In the event of any conflict between such laws, rules or regulations and the covenants, restrictions and easements created or imposed by this Declaration, the most restrictive provision shall govern and control.

ARTICLE VII ENFORCEMENT

7.01 RIGHT OF ENFORCEMENT. This Declaration and the Restrictions contained herein shall inure to the benefit of and shall be enforceable by (i) Declarant so long as it is an Owner, (ii) the Association and (iii) each Owner, his legal, representatives, heirs, successors and assigns.

7.02 RIGHT OF ABATEMENT.

(a) Except where different notice provisions are provided in Sections 5.11 and 6.14, in the event of a violation or breach of any Restriction contained in this Declaration, the Association shall give written notice by certified mail to the Owner setting forth in reasonable detail the nature of such violation or breach and the specific action or actions needed to be taken to remedy such violation or breach. If the Owner shall fail to take reasonable steps to remedy such violation or breach within thirty (30) days after the mailing of said written notice, then the Association shall have the Right of Abatement.

(b) The Right of Abatement, as used in this Section and in Sections 5.11 and 6.14 hereof, means the right of the Association, through its agents and employees, to enter at all reasonable times upon any Lot or Structure as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove, or repair such violation, breach or other condition which may exist thereon contrary to the provisions hereof, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and such actions, provided such entry and such actions are carried out in accordance with the provisions of this Section, and with the cost thereof, including the costs of collection including reasonable attorneys' fees, together with interest thereon at the lower of highest rate permitted by Law or 18%, to be a binding personal obligation of such Owner enforceable in law, as well as a lien on such Owner's Lot enforceable pursuant to the provisions of Section 8.04 hereof. Such lien shall be superior to any and all charges, liens or encumbrances which may in any manner arise or be imposed upon the Lot after such entry whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, excepting only (i) such liens for taxes or other public charges as are by applicable law made superior, (ii) the liens created by Section 4.01 and (iii) all deeds to secure debt given to secure a loan the proceeds of which are used (1) to purchase a Lot or Lots (together with any and all Structures which may from time to time be placed or located thereon) and (2) to finance the construction, repair or alteration of Structures.

7.03 SPECIFIC PERFORMANCE. Nothing contained in this Declaration shall be deemed to affect or limit the rights of Declarant, the Association or any Owner to enforce the Restrictions by appropriate judicial proceedings or to recover damages. However, it is hereby declared that it may be impossible to measure accurately in money the damages which will accrue to a beneficiary hereof, its transferees, successors or assigns, by reason of a violation of, or failure to perform any of the obligations provided by this Declaration; and therefore, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

7.04 COLLECTION OF ASSESSMENTS AND ENFORCEMENT OF LIEN.

(a) If any assessment, interest, cost or other charge is not paid as required by this Declaration, the Association may bring either an action at law against the Owner personally obligated to pay the same, or an action to foreclose any lien created by this Declaration against the Lot or Lots subject to the lien, or both, for the purpose of collecting such assessment, cost or charge, plus any interest thereon and costs of collection, including reasonable attorneys' fees.

(b) As an additional remedy, but in no way as a limitation on the remedies, if any assessment, interest, cost or other charge is not paid as required by this Declaration, each Owner hereby grants to the Association and its assigns the following irrevocable power of attorney: To sell the said Lot or Lots subject to the lien at auction, at the usual place for conducting sales at the Court House in Bartow County, Georgia to the highest bidder for cash, after advertising the time, terms and place of such sale once a week for four weeks immediately preceding such sale (but without regard to the number of days), in the paper in which the Sheriff's advertisements for Bartow County, Georgia are published, all other notice being hereby waived by each Owner, and the Association or any person on behalf of the Association, or assigns, may bid and purchase at such sale and thereupon execute and deliver to the purchaser or purchasers at such sale a conveyance of said property in fee

simple, which conveyance shall contain recitals as to the happenings of the default upon which the execution of the power of sale herein granted depends, and each Owner hereby constitutes and appoints the Association and assigns, the agent and attorney in fact of each Owner to make such recitals, and hereby covenants and agrees that the recitals so to be made by the Association, or assigns, shall be binding and conclusive upon the Owner whose property is the subject matter of such sale and the heirs, executors, administrators and assigns of such Owner, and that the conveyance to be made by the Association, or assigns, shall be effectual to bar all equity of redemption of such Owner, or the successors in interest of such Owner, in and to said Lot or Lots, and the Association or assigns shall collect the proceeds of such sale, and after reserving therefrom the entire amount of assessment, interest, cost or other charge due, together with all costs and expenses of sale and fifteen per centum of the aggregate amount due for attorneys' fees, shall pay any excess to such Owner, or to the heirs or assigns of such Owner as provided by law. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise and are granted as cumulative to the remedies for collection of said indebtedness provided by law.

(c) WAIVER. EACH OWNER, BY ACCEPTANCE OF A DEED CONVEYING A LOT SUBJECT TO THIS DECLARATION, WAIVES ANY RIGHT WHICH OWNER MAY HAVE UNDER THE CONSTITUTION OR THE LAWS OF THE STATE OF GEORGIA OR THE CONSTITUTION OR THE LAWS OF THE UNITED STATES OF AMERICA TO NOTICE OR TO A JUDICIAL HEARING PRIOR TO THE EXERCISE OF ANY RIGHT OR REMEDY PROVIDED BY THIS DECLARATION AND OWNER WAIVES OWNER'S RIGHTS, IF ANY, TO SET ASIDE OR INVALIDATE ANY SALE DULY CONSUMMATED IN ACCORDANCE WITH THE PROVISIONS OF THIS DECLARATION ON THE GROUND (IF SUCH BE THE CASE) THAT THE SALE WAS CONSUMMATED WITHOUT A PRIOR JUDICIAL HEARING. ALL WAIVERS BY OWNER IN THIS PARAGRAPH HAVE BEEN MADE VOLUNTARILY, INTELLIGENTLY, AND KNOWINGLY, AFTER OWNER HAS FIRST BEEN ALLOWED THE OPPORTUNITY TO CONSULT LEGAL COUNSEL WITH RESPECT TO OWNER'S POSSIBLE RIGHTS.

7.05 WAIVER. The failure of Declarant, the Association, or the Owner of any Lot, his or its respective legal representatives, heirs, successors and assigns, to enforce any Restrictions herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to any violation or breach occurring prior or subsequent thereto.

ARTICLE VIII DURATION AND AMENDMENT

8.01 DURATION. This Declaration and the Restrictions contained herein shall run with and bind the Property for a period of twenty (20) years from and after the date when this Declaration is filed for record with the Clerk of the Superior Court of Bartow County, Georgia, after which time this Declaration and the Restrictions shall be automatically renewed for successive periods of twenty (20) years provided, however, that in accordance with statutory procedure, this Declaration and the Restrictions contained herein may be terminated by an instrument executed in proper form and recorded in the office of the Clerk of the Superior Court of Bartow County, Georgia, pursuant to a resolution approving such termination which is approved by fifty-one (51) percent or greater Vote of those Class A Members of the Association who are present in person or by proxy and voting at a

meeting of Members duly held in accordance with the provisions of the By-Laws of the Association.

8.02 AMENDMENTS BY DECLARANT. During any period in which Declarant retains the right to appoint and remove any directors and officers of the Association, Declarant may amend this Declaration by an instrument in writing filed and recorded in the Land Records of the Superior Court of Bartow County, Georgia, without the approval of any Member or mortgagee; provided, however, that (i) in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of such Owner's Lot or of the Common Property as set forth in this Declaration, or if such amendment adversely affects the title to any Lot, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Members affected thereby, or (ii) in the event that such amendment would materially and adversely affect the security title and interest of any mortgagee, such amendment shall be valid only upon the written consent thereto of all such mortgagees so affected. Any amendment made pursuant to this Section 9.02 shall be certified by Declarant as having been duly approved by Declarant, and such Members and mortgagees if required, and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself. Each Owner, by acceptance of a deed or other conveyance to a Lot, agrees to be bound by such amendments as are permitted by this Section 9.02 and further agrees that, if requested to do so by Declarant, such Owner will consent to the amendment of this Declaration or any other instruments relating to the Development (i) if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any 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 any Lots subject to this Declaration, (iii) if such amendment is required by an institutional or governmental lender, purchaser or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any Lot subject to this Declaration, (iv) if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots subject to this Declaration or (v) if such amendment is necessary to correct a scrivener's error in the drafting of this Declaration.

8.03 AMENDMENTS BY ASSOCIATION. Amendments to this Declaration, other than those authorized by Section 9.02 hereof, shall be proposed and adopted in the following manner:

(a) Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Association at which such proposed amendment is to be considered and shall be delivered to each member of the Association;

(b) At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board or by Members of the Association. Such amendment must be approved by Members holding at least two-thirds (2/3) of the total votes in the Association provided, however (i) that any amendment which materially and adversely affects the security title and interest of any mortgagee must be approved by such mortgagee, and (ii) during any period in which Declarant has the right to appoint and remove officers and directors of the Association, such amendment must be approved by Declarant.

(c) The agreement of the required percentage of the Owners and, where required, Declarant and any mortgagee, to any amendment of this Declaration shall be evidenced by their execution of such amendment, or, in the alternative, and provided that Declarant does not then have the right to approve such amendment, the sworn statement of the President and any Vice President or the Secretary of the Association attached to or incorporated in the amendment executed by the Association, which sworn statement shall state unequivocally that the agreement of the required parties was lawfully obtained. Any such amendment of this Declaration shall become effective only when recorded or at such later date as may be specified in the Amendment itself.

ARTICLE IX ANNEXATION

For so long as Declarant has authority to appoint and remove Directors and Officers of the Association, additional real property may be annexed to the Property by the Declarant without the consent of the Class A Members. Such annexation shall be accomplished by filing in the Office of the Clerk of the Superior Court of Bartow County an approved subdivision plat describing the real property to be annexed to the Property and by including on such subdivision plat a statement that expressly sets forth the Declarant's intention to make such annexed real property subject to the provisions of this Declaration, or by filing an amendment to the Declaration reciting the annexation of the additional real property which is subjected to this Declaration; or by filing an amendment to the Declaration which has been consented to by the owners of the real property to be annexed if such real property is owned by someone other than Declarant. At the expiration of Declarant's right to appoint and remove Directors and Officers of the Association, no real property may be annexed to the Property unless such annexation is approved by a two-thirds (2/3) vote of the Members of the Association who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the provisions of the By-Laws of the Association.

Notwithstanding anything to contrary which may be contained within this Declaration, this Declaration applies only to the Property and shall not be construed to require the annexation of other property. This Declaration shall not encumber or restrict or burden, either as reciprocal negative easements or as implied covenants or as restrictive covenants or as equitable servitudes or as any other interest or claim, any property owned in part or entirely by Declarant or its principals. There is no common scheme of development of the balance of Declarant's property, and Declarant reserves the right to develop the balance of its property in any way it sees fit.

ARTICLE X MISCELLANEOUS

10.01 NO REVERTER. No restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

10.02 SEVERABILITY. A determination by a court that any provision hereof is invalid for any reason shall not affect the validity of any other provision hereof.

10.03 HEADINGS. The headings of the Articles and Sections hereof are for convenience only and shall not affect the meaning or interpretation of the contents of this Declaration.

10.04 GENDER. Throughout this Declaration, the masculine gender shall be deemed to include the feminine and neuter, and the singular, the plural, and vice versa.

10.05 NOTICES. All amendments, notices, requests, objections, waivers, rejections, agreements, approvals, disclosures or consent of any kind made pursuant to this Declaration, whether made by Declarant, the Association, the Owners, or any other person, shall be in writing. All such writings shall be sufficient only if deposited in the United States Mail, with sufficient postage, and sent to the following addresses:

(a) Declarant:

ES - Alford, LLC
1009B North Tennessee Street
Cartersville, Georgia 30120

(b) Owners:

Each Owner's address as registered with the Association in accordance with the By-Laws.

Any written communication transmitted in accordance with this Section 11.05 shall be deemed received on the third (3rd) day following the day such written notice is deposited in the United States Mail.

10.06 NO LIABILITY. Declarant has, using best efforts and all due diligence, prepared and recorded this Declaration so that each and every Owner shall have the right and the power to enforce the terms and provisions of this Declaration against every other Owner. However, in the event that this Declaration is, for any reason whatsoever, unenforceable by an Owner (or any other person) in a court of law or otherwise, Declarant shall have no liability of any kind as a result of such unenforceability, and each and every Owner, by acceptance of a deed conveying a Lot, acknowledges that Declarant shall have no such liability.

10.07 INSURANCE.

(a) At all times during the term of this Declaration, the Association, its successors and assigns, shall be required to keep any and all recreational facility improvements located on the Common Property fully insured by a reputable insurance company authorized to transact business in the State of Georgia with (i) fire, vandalism, malicious mischief and extended coverage insurance in an amount adequate to cover the cost of replacement of such improvements in the event of loss of any and/or all of such improvements, fixtures and contents thereof; and (ii) public liability insurance in such amounts as shall be determined by the Board of Directors as appropriate for the type of recreational activities which shall be allowed on the Common Property. Any such policies of insurance shall require that the certificate holders and insured be given thirty (30) days prior written

notice of any cancellation of such policies.

(b) Immediately after the damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty.

(c) Any damage or destruction shall be repaired or reconstructed unless within sixty (60) days after the casualty, at least seventy-five percent (75%) of the total Association vote entitled to vote thereon, and, so long as Declarant has the right to appoint and remove directors, Declarant, otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed one hundred twenty (120) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Association's Members, levy a special assessment. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited for the benefit of the Association. In the event that it should be determined by the Association in the manner described above that the damages or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Community in a neat and attractive condition.

(d) The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the persons who are responsible hereunder for maintenance of damaged or destroyed property.

(e) In addition to the coverage described hereinabove, the Association shall obtain such additional amounts and types of insurance as may be required from time to time, by either the Veterans Administration or Federal Housing Administration, their successors and assigns, for similar type residential subdivision communities.

ARTICLE XI MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders of first mortgages on Residences in the Development. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

11.01 NOTICES OF ACTION. An institutional holder, insurer, or guarantor of a first mortgage, who provides written request to the Association (such request to state the name and address of such holder, insurer, guarantor and the Residence 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 Development or which affects any Residence 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 Residence 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 Residence of any obligation under the Declaration or By-Laws of the Association which is not cured within sixty (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 eligible mortgages.

11.02 SPECIAL FHLMC PROVISION. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least two-thirds (2/3) of the first mortgagees or at least two-thirds (2/3) of the total Members of the Association vote entitled to vote thereon consent, the Association shall not:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Property which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Property shall not be deemed a transfer within the meaning of this subsection);

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

(c) 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 Residences and of the Common Property (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 provision.);

(d) fail to maintain insurance, as required by this Declaration; or,

(e) use hazard insurance proceeds for any Common Property losses for other than the repair, replacement, or reconstruction of such property.

First mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Property and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

11.03 NO PRIORITY. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first mortgagee of any Residence in the cases of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

11.04 NOTICE TO ASSOCIATION. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any mortgagee encumbering such Owner's Residence.

11.05 AMENDMENT BY BOARD. Should the Veterans Administration, the Federal National Mortgage Association, or the Federal Home Loan 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.

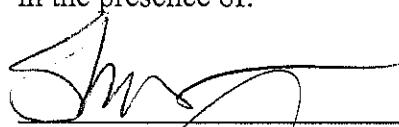
11.06 APPLICABILITY OF ARTICLE XII. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Georgia law of any of the acts set out in this Article.

11.07 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.

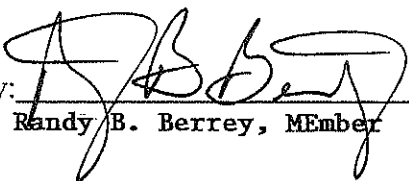
IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed and sealed the day and year first above written.

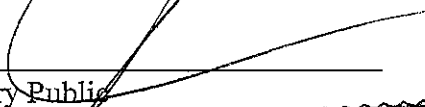
Signed, sealed and delivered,
in the presence of:

ES - ALFORD, LLC

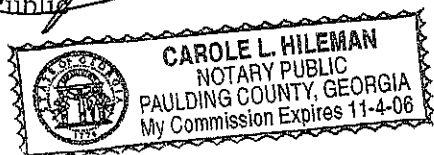


Unofficial Witness

By:  _____ (SEAL)
Randy B. Berrey, Member



Notary Public



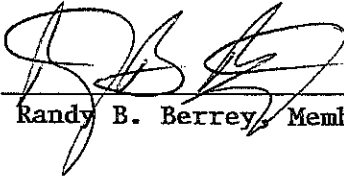
The Association, by the execution hereof, acknowledges and agrees that the Association is hereby bound by all of the Association's obligations under this Declaration of Covenants, Restrictions and Easements.

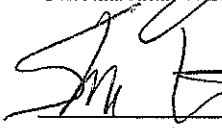
IN WITNESS WHEREOF, the Association, acting through its duly authorized officers, has caused this Declaration to be executed and sealed this 8th day of October, 2004

Signed, sealed and delivered,
in the presence of:

**THE DERBY HOMEOWNERS
ASSOCIATION, INC.**

Unofficial Witness

By:  _____ (SEAL)
Randy B. Berrey, Member



Notary Public

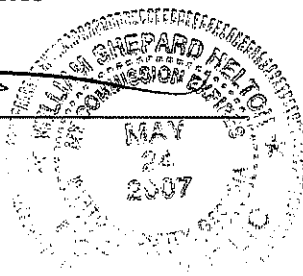


EXHIBIT "A"

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lots 214, 215, 216, 217, 218, 219 and 220 of the 17th District, 3rd Section of Bartow County, Georgia, as per plat of survey recorded at Plat Book 58, Pages 315 A-H, Bartow County, Georgia Records.

LESS AND EXCEPT:

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 220 of the 17th District, 3rd Section of Bartow County, Georgia; and being a 9.71 acre tract, as per final plat for The Derby, recorded in Plat Book 58, Page 315C, May 27, 2004 in the Bartow County, Georgia, Clerk of Court records and being more particularly described as follows:

Commencing at a half-inch (1/2") rebar corner set on the land lot line common to Land Lots 213 and 220 and its intersection with the westerly edge of right of way of Alford Road (having a 60 foot right of way width); thence in a southerly direction along the westerly edge of right of way of Alford Road south 00 degrees, 01 minutes 08 seconds east a distance of 710.68 feet to a point at the intersection of the westerly edge of right of way of Alford Road and the southwesterly edge of right of way of Secretariat Road (having a 60 foot right of way width), said point being the TRUE POINT OF BEGINNING; thence in a southerly direction along the westerly edge of right of way of Alford Road (having a 60 foot right of way width), in a southerly direction along the westerly edge of right of way of Alford Road south 00 degrees 01 minutes 08 seconds east a distance of 456.51 feet to a point on the westerly edge of right of way of Alford Road; thence along the northwesterly right of way of Alford Road along the arc of a 137.39-foot radius curve concave to the northwest having an arc distance of 225.07 feet (said arc being subtended by a chord lying to the northwest thereof bearing south 46 degrees 28 minutes 03 seconds west a distance of 200.74 feet) to a point on the northerly edge of right of way of Alford Road; thence along the northerly edge of right of way of Alford Road north 87 degrees 44 minutes 28 seconds west a distance of 550.59 feet to a point; thence in a northerly direction north 00 degrees 40 minutes 16 seconds east a distance of 609.27 feet to a half-inch (1/2") rebar corner set on the southerly right of way of Secretariat Road (having a 60 foot right of way width); thence in an easterly direction along the southerly edge of right of way of Secretariat Road south 89 degrees 07 minutes 46 seconds east a distance of 665.04 feet; thence along the southwesterly right of way of Secretariat Road along the arc of a 22.00-foot radius curve concave to northeast having an arc distance of 28.66 feet (said arc being subtended by a chord lying to the southwest thereof bearing south 51 degrees 48 minutes 47 seconds east a distance of 26.67 feet); thence along the southwesterly right of way of Secretariat Road south 14 degrees 29 minutes 47 seconds east a distance of 9.87 feet to a point at the intersection of the westerly edge of right of way of Alford Road and the southwesterly edge of right of way of Secretariat Road, said point being the TRUE POINT OF BEGINNING. The above described property contains 9.71 acres (Being 422,995 square feet).

This tract of land is shown on that particular survey titled Final Plat for The Derby prepared by Hayes, James & Associates, Inc., signed by Brendan R. Blake, Georgia Registered Land Surveyor No. 2375, last revised May 20, 2004.