

**AMENDED AND RESTATED DECLARATION
OF PROTECTIVE COVENANTS**

FOR

FOREST BROOK SUBDIVISION

THIS AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS FOR FOREST BROOK SUBDIVISION ("Covenants" or "Declaration") made as the ___ day of _____, 2013, by **Forest Brook Homeowners Association, Inc.**, a Georgia non-profit corporation (hereinafter referred to as the "Association");

WITNESSETH: That,

WHEREAS, by instrument dated as of March 25, 1973 (the "Original Covenants"), MCG Development Company subjected certain real property located in Cobb County, Georgia and described in the Original Covenants (the "Forest Brook subdivision") to the covenants and restrictions set forth therein; and

WHEREAS, the Association has succeeded to, taken the place of and become the Developer under the Original Covenants and is the Association under this Covenant;

WHEREAS, the Original Covenants shall be and remain in full force and affect, to the extent permitted by law;

WHEREAS, these Covenants are to amend and to be in addition to the Original Covenants and to the extent of any conflict or inconsistency between the Original Covenants and these Covenants, these Covenants shall supersede, control and be the overriding and guiding pronouncement and controlling statement between the two instruments.

NOW, THEREFORE, the Association hereby declares and consents that (i) the Original Covenants have been and are hereby superseded (in the event of conflict), amended and expressly added to and revised as set forth herein, (ii) Forest Brook Subdivision is and shall be owned, held, developed, transferred, sold, conveyed, leased, subleased, used, maintained, occupied, and mortgaged or otherwise encumbered subject to the protective covenants, conditions, restrictions and equitable servitudes hereinafter set forth in these Covenants, (iii) every grantee of any interest in Forest Brook Subdivision, by acceptance of a deed or other conveyance, whether or not such deed or other conveyance shall be signed by such grantee and whether or not such grantee shall otherwise consent in writing, shall take subject to these Covenants to the extent his or her predecessor in title has signed these Covenants, and shall be deemed to have consented and agreed to the same, and (iv) each and every one of the foregoing "Whereas" clauses are adopted, agreed to and incorporated into this Covenant.

ARTICLE 1

DEFINITIONS

1.1 **Certain Defined Terms.** As used herein, the following terms shall have the following meanings (such meanings to be applicable to both the singular and plural forms of the terms defined):

1.1.1 “Board of Directors” or “Board” shall mean the Board of Directors of the Forest Brook Homeowners Association, Inc. and shall be elected in accordance with the bylaws of the Board.

1.1.2 “Declaration” shall mean this Amended and Restated Declaration of Protective Covenants for Forest Brook Subdivision, including the Exhibits attached hereto, as further amended and in effect from time to time.

1.1.3 “Foreclosure” shall mean, without limitation, (i) the judicial foreclosure of a Mortgage, (ii) the exercise of a power of sale contained in any Mortgage, (iii) conveyance of the property encumbered by a Mortgage in lieu of foreclosure thereof, or (iv) any action commenced or taken by a lessor to regain possession or control of property leased to a lessee in a transaction commonly known as a “sale/leaseback.”

1.1.4 “Improvement” shall mean and include every structure and all appurtenances thereto of every kind and type and any other physical change upon, over, across, above or under a Lot or any part thereof, including, without limitation, all Residences, all buildings, driveways, parking structures and garages, tents, canopies, awnings, trellises, fences, landscaping (including, without limitation, landscaping of balconies, plazas and other portions of Residences), recreational facilities such as tennis courts and swimming pools, shelters, security and safety devices, screening walls, retaining walls, stairs, decks, hedges, drainage structures, communications equipment, poles, pumps, wells, tanks, reservoirs, pipes, lines meters, towers, and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities, the color, texture, or material or other change to any Improvement.

1.1.5 “Lot” shall mean and refer to any subdivided parcel of land within the Property.

1.1.6 “Mortgage” shall mean a mortgage, deed to secure debt, deed of trust, or other similar security instrument now or hereafter duly recorded in the real property records of Cobb County, Georgia, conveying a lien upon or in or security title to or in Forest Brook Subdivision, any part thereof or any interest or estate therein, or any Improvements thereon, or any lease of Forest Brook Subdivision, any part thereof or any interest or estate therein, or any Improvements thereon, in a transaction commonly known as a “sale/leaseback”.

1.1.7 “Mortgagee” shall mean the holder of a Mortgage.

1.1.8 “Occupant” shall mean any Person holding a leasehold interest or usufruct in, or any other right to use or possess any of the real property subject to these Covenants.

1.1.9 “Owner” shall mean any Person or Persons who own or hold an aggregate fee simple interest in a Lot, as shown by the public real estate records of Cobb County, Georgia, subject to the following special rules:

1.1.9.1 Any Person having an interest in such real property solely as security under a Mortgage shall not be deemed an Owner, unless such Person shall have excluded the mortgagor from possession thereof by appropriate legal proceedings following a default under such Mortgage or has acquired fee simple title to such property by Foreclosure;

1.1.9.2 Occupants and other individual tenants or lessees of any portion of such real property shall not be deemed an Owner thereof, unless otherwise agreed by the fee simple or remainder title holder thereof;

1.1.9.3 Any Person holding or owning any easements, rights-of-way or licenses that pertain to or affect any such real property shall not be deemed an Owner.

1.1.10 "Person" shall mean any corporation, partnership, co-tenancy, joint venture, individual, business trust, real estate investment trust, trust, banking association, federal or state savings and loan institution, or any other legal entity, whether or not a party hereto.

1.1.11 "Property" shall mean the real property herein referred to as Forest Brook Subdivision.

1.1.12 "Residence" shall mean a dwelling, including any attached garage, situated on a Lot.

1.2 **Other Terms.** All terms used in this Declaration which are not defined in this Article I shall have the meanings set forth elsewhere in this Declaration.

ARTICLE 2

APPLICATION

2.1 **Attaching to Lots.** The Forest Brook Subdivision contains one hundred twenty-six (126) Lot(s) which this Declaration can cover and apply to. This Declaration shall only become effective, valid and enforceable upon and apply to those Lots whose Owners execute a Subordination and subordinate to this Declaration by virtue of the Subordination attached hereto or a subsequently signed subordination.

2.2 **Binding Effects.** This Declaration shall only be effective and binding upon those Owner(s) of Lots who execute the attached Subordination and only if fifty percent (50%) or more of Owners execute the Subordination on or before June 30, 2015, in which event this Declaration and the attached Subordinations shall be recorded in the Cobb County, Georgia, records before February 15, 2015. If this Declaration and attached Subordinations are not recorded before September 30, 2015, this Declaration shall be deemed void and of no force and effect. If this Declaration and attached Subordinations are recorded before September 30, 2015, this Declaration shall be deemed valid and enforceable in keeping with its terms against those Lots whose Owners have executed the Subordination and any and every grantee of any interest in a Lot (or part thereof) where his, her or their predecessor in title to the Lot signed this Declaration.

ARTICLE 3

PURPOSE OF THIS DECLARATION

3.1 **Purpose.** The purpose of this Declaration is to ensure the proper use and appropriate development and improvement of all real property that constitutes Forest Brook Subdivision that this Declaration is applicable to, so as to provide a harmonious development that will promote the general welfare of the Owners and Occupants thereof and will protect the present and future value of Forest Brook Subdivision and all parts thereof; to ensure the orderly and attractive development and use of

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1.1.9.1 Any Person having an interest in such real property solely as security under a Mortgage shall not be deemed an Owner, unless such Person shall have excluded the mortgagor from possession thereof by appropriate legal proceedings following a default under such Mortgage or has acquired fee simple title to such property by Foreclosure;

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PURPOSE OF THIS DECLARATION

3.1 **Purpose.** The purpose of this Declaration is to ensure the proper use and appropriate development and improvement of all real property that constitutes Forest Brook Subdivision that this Declaration is applicable to, so as to provide a harmonious development that will promote the general welfare of the Owners and Occupants thereof and will protect the present and future value of Forest Brook Subdivision and all parts thereof; to ensure the orderly and attractive development and use of

Forest Brook Subdivision; to protect Owners against such improper use of surrounding Lots as will depreciate the value of their Lots; to provide for the orderly and effective maintenance of Forest Brook Subdivision; and in general to preserve the architectural integrity, aesthetic appearance, and economic value of Forest Brook Subdivision.

3.2 **Amendment and Restatement.** This Declaration amends, modifies and adds to the Original Covenants and to the extent of any conflict supersedes and controls over the Original Covenants.

3.3 **Binding Effect.** Each purchaser or grantee of any interest in any real property now or hereafter made subject to this Declaration, by acceptance of a deed or other conveyance thereof, thereby agrees to the conditions, covenants, restrictions, easements, and reservations of this Declaration.

3.4 **Run With the Land.** This Declaration and all of the provisions hereof are and shall be real covenants running with Forest Brook Subdivision and shall burden and bind each signatory or his successor of a Lot where a predecessor in title signed the attached Subordinations on behalf of said Lot. To that end, this Declaration shall be deemed incorporated in all deeds and conveyances hereinafter made by any Owner who has signed the attached Subordinations. Every Person, including a Mortgagee, acquiring or holding any interest or estate in any portion of Forest Brook Subdivision that is subjected to this Declaration, shall take or hold such interest or estate, or the security interest with respect thereto, with notice of the terms and provisions of this Declaration; and in accepting such interest or estate in, or a security interest with respect to, any portion of Forest Brook Subdivision subject to this Declaration, such Person shall be deemed to have assented to this Declaration and all of the terms and provisions hereof.

3.5 **Amendment.** This Declaration may be amended from time to time by an instrument in writing, executed by Owners holding not less than fifty-five percent (55%) of the Lots subject to this Declaration as evidenced by the Subordinations placed of record in the real property records of Cobb County, Georgia. Amendments made pursuant to the provisions of this Section 3.5 shall inure to the benefit of and be binding upon all real property and interests therein that are part of Forest Brook Subdivision and subject to this Declaration. Notwithstanding the foregoing, no amendment of this Declaration which imposes a greater restriction on the use or development of any part of Forest Brook Subdivision will be enforced unless agreed to in writing by the Owner of such affected property at the time such amendment is made.

ARTICLE 4

THE DESIGN REVIEW COMMITTEE

4.1 **Creation.** The Design Review Committee (the "Committee") shall consist of a chair and two additional members and may, but need not, include a member of the Board. The members shall be appointed by a majority vote of the Board of Directors of Forest Brook Homeowners Association, Inc. ("Board") and serve as provided in this Declaration and as designated by the Board.

4.2 **Duties and Functions.** The Committee shall adopt rules and regulations, consistent with this Declaration, for the review and approval or disapproval of all proposed alteration, repair or construction of the Lots and Improvements. The Committee shall impose a requirement that improvements or landscaping pursuant to any approval be commenced within a stipulated time, failing which the approval shall be deemed revoked. Nothing shall be altered, changed, constructed or planted

in or removed from a Lot, Residence, carport, fence, wall, mailbox, screen enclosure or other improvement and no act shall be performed which would impair the structural integrity of any Residence or other Improvements, or which would affect any common utility services or installations, or which would change the exterior appearance, type, color, grade, height or location of any structure or other improvement on any Lot without the approval of the Committee.

4.3 Arbitration. If an Owner seeking approval pursuant to this Article disputes the decision of the Committee, it may appeal the decision to the Board. The Board, within 30 days after the date the appeal is filed, shall convene a special meeting of the Board and at that meeting shall determine to either (i) uphold the decision of the Committee, (ii) reverse the decision of the Committee, or (iii) reverse the decision of the Committee subject to the Owner's compliance with specified conditions. If the Owner disputes the decision of the Board, the matter, at the Owner's election, may be submitted to arbitration which shall be binding and mandatory. At the time the Owner notifies the Board of its appeal of the decision of the Committee, it shall deliver to the Board copies of all materials used by the Owner in its submission to the Committee.

4.4 No Liability for Architectural Review. Neither the Committee nor the members or designated representatives thereof shall be liable for damages to anyone submitting plans or specifications to them for approval, or to any Owner of property affected by this Declaration by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications, or for any defect, whether in design or construction, in any structure constructed from such plans and specifications. Neither the Committee nor any member thereof shall be responsible for reviewing or approving any plans with respect to the adequacy of engineering design in any aspect whatsoever. Every Person who submits plans or specifications to the Committee for approval agrees, by submission of such plans and specifications, and every Owner or Occupant of any of said property also agrees, that it will not bring any action, suit or claim against the Committee or any of the members or designated representatives thereof with respect to any matters for which such persons or entities are relieved of liability pursuant to this Article. Each Owner, in addition to satisfying the requirements set forth in this Declaration, shall determine and satisfy the requirements imposed by the County of Cobb, Georgia. Approval by the Committee does not constitute a representation that the proposed construction will be approved by the County of Cobb, Georgia or that it conforms to the zoning or building requirements thereof.

4.5 No Disqualification of Members. No member (including the Chairman) of the Committee shall be disqualified from taking part in any Committee action or discussion on account of such Person's having a financial interest in the matter under consideration.

4.6 Limitation on Liability. No member (including the Chairman) of the Committee shall be liable to any Owner or Occupant or to any other Person for any loss, damage or injury, or claim thereof, arising out of or in any way connected with the performance or nonperformance of the Committee's duties under this Article 4 unless due to the willful misconduct, gross negligence or bad faith of any member thereof.

ARTICLE 5

CONTROL AND LAND USE

5.1 Residential Use. Each Lot shall be used exclusively for residential purposes. No Owner shall be permitted to lease a Residence for transient or hotel purposes (a rental for any period less than

30 days or a rental which includes providing the occupants with customary hotel service such as room service for food and beverage, maid service, laundry and linen service or bellboy service).

5.2 Residence Lease. Unless the Board otherwise provides, any permitted lease of a Residence shall be in writing and shall provide that its terms are subject in all respects to this Declaration and any failure of the lessee to comply with the terms of the Declaration shall be a default under the lease and a failure to perform a condition and covenant of the lease. No Owner may lease or permit subleases of less than the entire Residence.

5.3 No Improvements. No Improvement shall be made on any parcel of land that is part of the Forest Brook Subdivision unless such Improvement has been approved by the Committee in writing; provided, however, that any Improvement, which (i) takes place completely within a Residence (ii) does not change the exterior appearance or alter the structural integrity of such Residence, (iii) is not visible from the outside of the Residence, and (iv) does not create a demand for extraordinary services or utilities, may be undertaken without the approval of the Committee.

5.4 No Subdivision. No Lot shall be split, divided or subdivided nor shall the size, dimensions or boundaries of any Lot be otherwise changed or altered without the prior written approval of the Committee.

5.5 Fences, Hedges, and Walls. No fence, hedge, wall or other dividing instrumentality shall be constructed in the front or side yard of any Lot. In no event shall chain link fencing be permitted on any Lot.

5.6 Temporary Structures. No temporary buildings or other temporary structure shall be permitted on any Lot unless approved by the Committee in accordance with a policy established by the Committee.

5.7 Signs. No sign, advertisement, poster, bill or notice of any kind shall be displayed to the public view on or from any Lot without the prior consent of the Committee, subject to the following exceptions:

A single sign, indicating the number of the Residence and the name of the Owner, which has been approved as to design, size and location by the Committee; and

A single sign of customary and reasonable dimensions advertising any Lot for sale, lease or rent and placed on the Lot.

5.8 Trailers, Trucks, Campers and Boats. No mobile home or motor coach (whether towed or self-powered, and whether designed for permanent residence or recreational use), trailer of any kind, truck (except three-quarter ton or smaller pick-up trucks without campers), unmounted camper, boat or similar recreational vehicle, or a disabled vehicle of any kind, shall be kept, maintained, placed, constructed, remodeled, reconstructed or repaired upon any Lot, on the street within the Forest Brook Subdivision, driveway or parking area, nor shall any maintenance or repair of any motor vehicle be performed except within a Residence where totally isolated from public view.

5.9 Playground Sets, Trampolines, and Basketball Goals. Playground sets and trampolines are permitted only in backyards and may not be located on common ground or outside Lot boundaries. Playground sets and trampolines must be maintained in a high-state of repair, substantially free of rust, no bent or broken pieces. Free-standing basketball posts and goals are prohibited.

Basketball backboards or goals attached to the house, garage, or roof are allowed. Portable basketball goals should be stored (preferably in the garage) when not in regular use and not be left in plain view from the street.

5.10 **Laundry.** No exterior clotheslines shall be erected or maintained, and there shall be no drying or laundering of clothes on the open portion of any Lot.

5.11 **Pets and Animals.** No animals, livestock, reptiles, rodents, birds or poultry of any kind shall be raised, bred or kept in any Lot. Owners may keep a reasonable number of pets of the types usually associated with or permitted in dwellings with detached walls. Under no circumstances may an animal be kept, bred or maintained for any commercial purpose.

5.12 **Plants and Pests.** Neither an Owner, nor its family, lessees, tenants or contract purchasers, shall permit any thing or condition on a Lot which would induce, breed or harbor infectious plant diseases or noxious insects or vermin.

5.13 **No Nuisance.** No noxious or offensive trades, services, or activities shall be conducted on any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the Owners or occupants by reason of unsightliness or excessive emission of fumes, odors, glare, vibration, gases, radiation, dust, liquid, gaseous or solid wastes, smoke, or noise. All garbage, rubbish and debris shall be deposited immediately in the proper receptacles for that purpose. Garments, rugs or similar items shall not be hung from windows or the facades of the Residence.

5.14 **No Hazardous Substances.** No Owner or Occupant nor any lessee, licensee or other Person acting at the direction or with the consent of an Owner or Occupant shall manufacture, treat, use, store or dispose of any hazardous substance on, in, above or under Forest Brook Subdivision, or any part thereof, except for normal quantities of household products used substantially in accordance with all applicable requirements of governmental authorities having jurisdiction. No Owner or Occupant nor any lessee, licensee or other Person acting at the direction or with the consent of an Owner or Occupant shall knowingly permit the release of a hazardous substance on, from, in, above or under Forest Brook Subdivision or any part thereof so as to create an imminent and substantial endangerment to health, welfare or the environment.

5.15 **Sexually Oriented Businesses.** In supplementation of all other provisions of these covenants, no Owner or Occupant of Forest Brook Subdivision shall authorize or permit the sale or display of pornographic materials or the operation of any sexually oriented or pornographic business including nude dancing establishments, massage parlors, adult theaters displaying pornographic pictures or films, and adult bookstores dealing in pornographic materials.

5.16 **Airspace and Exterior.** No Owner or Occupant shall install any sports standard television, FM, AM, or amateur radio antenna or satellite dish, air conditioning unit, electrical or telephone wiring, or similar thing on the exterior of a Residence or in such a manner that such protrude through a wall or the roof of a Residence without prior written authorization of the Committee. All ground-mounted equipment shall be screened from view with structures or landscaping. Notwithstanding the foregoing, an Owner may install and use a video or television antenna, including a satellite dish, that has a diameter or diagonal measurement of 36 inches or less, provided that such antenna (or satellite dish) is entirely within a structure, or if outside a structure within the Lot, is not visible from any street or common area.

5.17 **Open Fires.** Open fires of any type within Forest Brook Subdivision are hereby expressly prohibited.

5.18 **Changes in Zoning.** Without the approval of the Committee, no Owner or Occupant shall file with any governmental authority having jurisdiction over the Property or any part thereof any application or petition for zoning, rezoning, special use permit, or zoning variance, any subdivision plan, plat or application, any request for annexation, or any similar filing affecting the use of any portion of the Property. The Owners shall develop and use their respective Lots in accordance with the current zoning conditions and this Declaration.

5.19 **Air Conditioners.** No air conditioners shall be visible from the front of the Improvements on a Lot in any way or visible from the street.

5.20 **Television Satellite Dishes.** No television satellite dishes or similar dishes or antennas shall be installed in the front yard of any Lot.

5.21 **Maintenance by Owner.**

5.21.1 **Mandatory Maintenance.** Each Owner and Occupant of Forest Brook Subdivision shall be responsible for keeping its Lot (whether or not improved), and any land located between the boundary lines of the Lot and the curb lines of any improved street adjacent to said boundary lines, together with any sidewalk located therein (herein referred to as "Adjacent Strips"), Residences, and other Improvements in a safe, clean, neat, and orderly condition and shall prevent rubbish from accumulating on its Lot or surrounding Adjacent Strips. Landscaping of a Lot and Adjacent Strips shall be maintained in a neat and orderly manner. Each Owner shall keep its Lot, any Adjacent Strips and all Improvements in good working order and repair, including, but not limited to, painting and repairing Improvements, seeding, watering, and mowing lawns, planting, pruning, and cutting trees and shrubbery, and other appropriate external care of all landscaping and Improvements, all in a manner consistent with first-class property management. Such Owner shall make diligent efforts to prevent and promptly correct any unclean or unsightly conditions or Improvements on its Lot or any Adjacent Strips.

5.21.2 **Association May Perform.** After giving notice and hearing as herein specified, and if an Owner fails to perform necessary maintenance and repairs for which it is obligated pursuant to Section 5.21, the Association may provide to any Lot requiring same, when necessary in the opinion of the Board to preserve the beauty, quality and value of the neighborhood, such repair and maintenance as is necessary (herein referred to as "Optional Maintenance").

5.21.3 **Notice.** When, in the opinion of the Board, certain Optional Maintenance needs to be provided to a Lot, the Owner shall be promptly notified in a writing specifying exactly what should be repaired, fixed or corrected; and, upon receipt of the written notice, the Owner shall have fifteen (15) business days within which to begin in good faith to perform the Optional Maintenance or within which to file an appeal before the Committee. If the Owner does not begin in good faith to perform the Optional Maintenance or file an appeal within the fifteen (15) business days provided, the Committee may cause the Optional Maintenance to be performed at the expense of the Owner or Occupant deemed to be in violation in accordance with the provisions of Article 5 hereof. If the Owner appeals to the Committee, the Committee shall hear the appeal within seven (7) days. If the Committee confirms the findings of the Board, the Committee may cause the violation to be cured at the expense of the Owner or Occupant in violation in accordance with the provisions of Article 5 hereof, if the Owner has not cured such violation within a reasonable time as determined by the Committee.

5.21.4 **Hearing.** If a hearing is demanded, the Board shall set a date therefor and give the Owner at least 15 days' notice thereof. The Board shall in all respects comply with the provisions of Section 6 of this Declaration. The hearing shall be informal and rules of evidence shall not apply. The Board shall render its decision in writing. The Owner may, within 20 days of service on it of such decision, submit the matter to arbitration.

5.21.5 **Assessment of Costs.** The cost of such Optional Maintenance shall be assessed against the Owner of said Lot upon which such Optional Maintenance is performed and such shall be the personal obligation of the Owner, and shall become due and payable in all respects, together with interest and fees for the cost of collection, including without limitation attorneys' fees.

5.21.6 **Access at Reasonable Hours.** For the purpose of performing the maintenance authorized by the Declaration, the Association, through its duly authorized agents or employees, shall have the right to enter upon any Lot other improvements thereon at reasonable hours with 24 hours' notice on any day except Saturday, Sunday or a holiday recognized by the U.S. Post Office and such entry shall not be deemed a trespass.

ARTICLE 6

ENFORCEMENT

6.1 **Responsibility of Owners.** Each Owner shall be responsible for compliance with the terms, provisions, and conditions of this Declaration by its Occupants, employees, agents, independent contractors, tenants, customers, and visitors.

6.2 **Complaints.** Each Owner and Occupant shall be entitled to file complaints with the Committee alleging a violation of this Declaration. The Committee shall designate one (1) of its regular members or an agent who shall be readily available to investigate any complaints so filed. If such member or agent shall conclude that a breach or violation has occurred, the alleged violator shall be promptly notified in writing of the complaint; and, upon receipt of the written notice of the complaint, the alleged violator shall have fifteen (15) business days within which to begin in good faith to cure the violation or within which to file an appeal before the Committee. If the alleged violator does not begin in good faith to cure the violation or file an appeal within the fifteen (15) business days provided, the Committee may cause the violation to be cured at the expense of the Owner or Occupant deemed to be in violation in accordance with the provisions of Article 6 hereof. If the alleged violator appeals to the Committee, the Committee shall hear the appeal within seven (7) days. If the Committee confirms the findings of the individual member or agent, the Committee may cause the violation to be cured at the expense of the Owner or Occupant in violation in accordance with the provisions of Article 6 hereof, if the violator has not cured such violation within a reasonable time as determined by the Committee.

6.3 **Failure to Enforce Not a Waiver.** The failure of the Committee, the Association or any Owner to enforce any provision herein contained shall in no event be deemed to be a waiver of the right to do so, nor of the right to enforce any other restriction. Except as otherwise provided in Section 4.6 hereof, no suit shall lie against the Committee, the Association or any Owner for any failure, refusal, or omission to institute or join in any action or proceeding for the enforcement hereof or to restrain the violation of any of the provisions hereof.

6.4 **Attorney's Fees.** Every Owner or Occupant shall be obligated to pay the actual attorney's fees (which shall be reasonable in amount) of the Person bringing an action against such Owner or Occupant for the enforcement of the provisions of this Declaration, provided such Person

bringing said action has obtained a judgment in its favor by a court of record and such judgment has become final and non-appealable.

6.5 **Remedies Cumulative.** The remedies provided herein shall be in addition to and not in substitution for any rights and remedies now or hereafter existing at law or in equity. The remedies provided herein or otherwise available shall be cumulative and may be exercised concurrently. The failure to exercise any one of the remedies provided herein shall not constitute a waiver thereof, nor shall use of any of the remedies provided herein prevent the subsequent or concurrent resort to any other remedy or remedies. Each Owner acknowledges and agrees that damages or other legal remedies may be inadequate and specific performance shall be required in the absence of an adequate legal remedy.

6.6 **Nuisance.** Every violation of this Declaration or any part thereof is hereby declared to be and constitute a nuisance, and every public or private remedy allowed therefor by law or in equity against an Owner or Occupant shall be applicable against every such violation and may be exercised by the Committee, the Association or any Owner.

ARTICLE 7

MISCELLANEOUS

7.1 **Governing law.** This Declaration concerns real property located in the State of Georgia and shall be governed by and interpreted in accordance with the laws of the State of Georgia. The venue for any action or suit brought against any Owner relating to this Declaration or the enforcement of any provisions hereof shall be Cobb County, Georgia.

7.2 **Severability.** Invalidation of any one or more of the provisions of this Declaration by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

7.3 **Conflicts.** The zoning conditions, applicable building and inspection codes and regulations, and any and all other requirements of governmental authorities shall be observed. In the event of any conflict between this Declaration and any such requirements of governmental authorities, the provisions which require more restrictive standards shall apply.

7.4 **No Reverter.** No covenant or restriction set forth in this Declaration is intended to be or shall be construed as a condition subsequent, a conditional limitation, or as creating a possibility of reverter.

7.5 **Interpretations.** In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which will best effect the intent of the purpose set forth in Article 3 hereof. No provision of this Declaration shall be construed against or interpreted to the disadvantage of any Owner by any court or other governmental authority by reason of such Owner's having or being deemed to have structured or dictated such provision.

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

7.7 **Gender and Grammar.** The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions

hereof apply either to corporations or other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

7.8 **Time of Essence.** Time is of the essence of this Declaration and every provision hereof.

ARTICLE 8

8.1 This Declaration is designed for and intended to apply to, be applicable to, and bind each and every Lot and all Property located within and being a part of Forest Brook Subdivision and said Lot(s) and Property are more particularly described and set forth in:

- (a) Plat Book 53, page 81 of the Cobb County, Georgia, records.
- (b) Plat Book 59, page 70 of the Cobb County, Georgia, records.
- (c) Plat Book 67, page 129 of the Cobb County, Georgia, records.
- (d) Plat Book 71, page 94 of the Cobb County, Georgia, records.
- (e) Plat Book 71, page 95 of the Cobb County, Georgia, records.
- (f) Plat Book 72, page 66 of the Cobb County, Georgia, records.
- (g) Plat Book 72, page 67 of the Cobb County, Georgia, records.
- (h) Plat Book 126, page 43 of the Cobb County, Georgia, records.

To the extent the foregoing plats do not show or indicate all Lot(s) or Property in Forest Brook Subdivision, all such additional parcels, land, Lots or Improvements which are a part of Forest Brook Subdivision are expressly incorporated herein by this reference.

ARTICLE 9

9.1 Notwithstanding any other provisions of this Declaration, the terms and provisions of this Declaration shall only be binding upon and enforceable against the Lots of and those Owners in the Forest Brook Subdivision who execute and sign the Subordination attached hereto and made a part hereof and their successors or assigns in and to the Lot or Lots owned by the Owner at the time of executing the Subordination.

(Signatures Commence on Following Page)

IN WITNESS WHEREOF, the Association has executed and delivered this Declaration under seal the date first above written.

Signed, sealed and delivered
in the presence of:

Forest Brook Homeowners Association, Inc., a
Georgia corporation

Witness

By: _____ (SEAL)

Name: _____

Title: _____

Notary Public

Attest: _____

Name: _____

Title: _____

My Commission Expires:

[NOTARIAL SEAL]

(Subordination Attached)

SUBORDINATION

SUBORDINATION OF PROPERTY AND SUBJECTING PROPERTY TO THE TERMS AND PROVISIONS OF THE AMENDED AND RESTATED DECLARATION OF PROTECTED COVENANTS OF FOREST BROOK SUBDIVISION TO BE RECORDED IN THE COBB COUNTY, GEORGIA, RECORDS

The undersigned party(ies) expressly enter into and agrees to subordinate their interest in and to the Lot which they own in Forest Brook Subdivision and subject that Lot which they own to the Amended and Restated Declaration of Protective Covenants of Forest Brook Subdivision to be recorded in the Cobb County, Georgia, records. It is contemplated that this Subordination will be attached to and made a part of said Amendment and Restated Declaration of Protected Covenants of Forest Brooks Subdivision, but a Subordination may be recorded separately.

It is the undersigned's clear intent and purpose to make his, their or its Lot(s) subordinate to and subject to the Amended and Restated Declaration of Protected Covenants of Forest Brook Subdivision. It is acknowledged and agreed that by subordinating the undersigned's Lot(s) to the Amended and Restated Declaration of Protected Covenants of Forest Brook Subdivision, the undersigned jointly and severally agrees for itself and themselves and their successors and assigns to have its, their, and its Lot(s) governed by, bound by and subjected to the Amended and Restated Declaration of Protective Covenants so that the Amended and Restated Declaration of Protective Covenants of Forest Brook Subdivision is attached to, affixed to, applied to and run with the land that is owned by each and every Owner of a Lot who executes and signs the Subordination and said Amended and Restated Declaration of Protected Covenants of Forest Brook Subdivision is to be expressly binding and enforceable against the undersigned and the undersigned's Lot(s) in keeping with the terms and provisions hereof.

Signed, sealed and delivered this _____ day of _____, 201____, in the presence of:

OWNER(S):

Unofficial Witness

Notary Public

Street Address in Forest Brook Subdivision:

My Commission Expires: _____

Lot Designation within Forest Brook Subdivision is as follows:

[NOTARY SEAL]

(Continued)

Signed, sealed and delivered this ____ day of _____, 201____, in the presence of:

Unofficial Witness

Notary Public

My Commission Expires: _____
[NOTARY SEAL]

OWNER(S):

Street Address in Forest Brook Subdivision:

Lot Designation within Forest Brook Subdivision is as follows:

Signed, sealed and delivered this ____ day of _____, 201____, in the presence of:

Unofficial Witness

Notary Public

My Commission Expires: _____
[NOTARY SEAL]

OWNER(S):

Street Address in Forest Brook Subdivision:

Lot Designation within Forest Brook Subdivision is as follows:

RESOLUTION

Resolution of the Forest Brook Homeowners Association, Inc.

The Forest Brook Homeowners Association, Inc. ("Association") is a non-profit corporation. Its principal address is Post Office Box 72212 Marietta, Georgia 30007-2212. At a properly called meeting of the Board of Directors of the Association, being composed of its President, Vice-President, Secretary, Treasurer, and Member at Large, said Board did consider and study in depth what the annual dues for the Association should be for the calendar year 2013. After significant consideration and study of the issue, the Board concluded and unanimously passed this Resolution calling for the payment of Association dues for the year 2013 to be \$_____.

These dues will be collected by the Board by notifying the membership of the Association of the amount of these dues, the obligation to pay such and the time frame in which they are due.

It is clearly understood and agreed that the failure to pay these dues in a timely fashion for the calendar year 2013 will have those adverse effects set forth and described in the Declaration of Covenants, Conditions and Restrictions for the Forest Brook Recreational Facilities, as it may have been amended.

By: _____
President

By: _____
Vice-President

By: _____
Secretary

By: _____
Treasurer

By: _____
Member at Large