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**STATE OF GEORGIA  
COUNTY OF FANNIN**

**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS FOR  
STUART HIGHLANDS SUBDIVISION**

This Declaration of Covenants, Conditions, Restrictions and Easements for STUART HIGHLANDS SUBDIVISION (the "Declaration"), is made this 13th day of March, 2007, by the undersigned, LPY REAL ESTATE INVESTMENT CORP., a Georgia corporation (hereafter collectively referred to as "Developer").

**WITNESSETH:**

**WHEREAS**, said Developer is the owner of the development generally known in the community as STUART HIGHLANDS SUBDIVISION, Phase I, and being a development of all those lots, tracts or parcels of land situate, lying and being in the 8<sup>th</sup> District and 2<sup>nd</sup> Section of Fannin County, Georgia, and being part of Land Lots No. 13 and 24 as shown on a plat of survey (the "Plat") dated February 30, 2007, prepared by Robert A. Johnston, G.R.L.S. No. 2949, and recorded in Plat Hanger \_\_\_\_\_, page(s) \_\_\_\_\_, in the office of the Clerk of Superior Court, Fannin County, Georgia (the "Community"); and

**WHEREAS**, the Lots within the Community are being conveyed subject to all easements, restrictions, and rights of way as set forth on the recorded plat for the Community; and

**WHEREAS**, this document is not intended to create a property owners' development within the meaning of O.C.G.A. §44-3-220, *et seq.*; and

**WHEREAS**, it is to the interest, benefit and advantage of the Developer, the subsequent owners and of each and every person who shall hereinafter purchase any Lot in the Community that certain protective covenants governing and regulating the use and occupancy of the same be established, set forth and declared.

**NOW, THEREFORE**, for and in consideration of the premises and all of the benefits to be derived by Developer, Owners, their successors and assigns, and each and every subsequent Owner of any Lot in the Community, the Developer does hereby set up, establish, promulgate, and declare the following protective covenants to apply to all Lots in the Community. These

protective covenants shall become effective immediately and shall be covenants running with the land and shall be binding on all parties, person or entities owning a Lot or Lots in the Community. Every grantee in the Community, by acceptance of deed or other conveyance of such interest, whether or not it shall be so expressed, shall take title to the same subject to this Declaration and to the terms and conditions herein and shall be deemed to have assented to said terms and conditions.

**ARTICLE I**  
**DECLARATION OF PROPERTY OWNERS' ASSOCIATION**

Section 1. Definitions. The following words, when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

- A. "ARC" shall mean the Architectural Review Committee.
- B. "Articles" shall mean the Articles of Incorporation of the Association.
- C. "Board" shall mean the Board of Directors of the Association.
- D. "By-laws" shall mean the By-laws of the Association.
- E. "Common Expenses" shall mean all expenses of any kind or nature whatsoever incurred by the Association, including, but not limited to, the following:
  - 1. Expenses incurred in connection with the ownership, maintenance, repair, improvement or operation of the Common Property, including Private Drives, or any other property to be maintained by the Association as provided in this Declaration, including, but not limited to, utilities, taxes, assessments, insurance, operation, maintenance, repairs, improvements, and alterations;
  - 2. Expenses incurred in connection with the administration and management of the Association; and
  - 3. Expenses declared to be Common Expenses by the provisions of this Declaration or by the Association.
- F. "Common Property" shall mean those certain areas in the Community and all other real property owned, or to be owned, by the Association for the common use and enjoyment of the Owners, including, but not limited to, all common areas, the Private Drives, streets, roads, walkways, pathways, ponds, docks, parking areas, utility service areas, parks, and common structures.
- G. "Community" shall mean the property known as STUART HIGHLANDS SUBDIVISION, which is described in the first paragraph of the recitals to this Declaration, and such additional real property as may be shown on plats of future phases, all of which shall be incorporated herein by reference thereto.
- H. "County" shall mean Fannin County, Georgia.
- I. "Declarant" or "Developer" shall mean and refer to LPY REAL ESTATE INVESTMENT CORP., its successors and assigns.

J. "Development" shall mean, the entire Community, including existing and future phases.

K. "Home" shall mean a completely constructed single family home, which is designated and intended for use and occupancy as a residence along with all other improvements on the Lots (i.e. fences, sheds, detached garages, etc.) and which is subject to assessments under this Declaration or any supplemental declaration made by the Developer. Said term includes any interest in land, improvement and other property appurtenant to the Home.

L. "Lot" shall mean and refer to any Lot shown on the Plat.

M. "Member(s)" shall mean and refer to all those Owners who are members of the Association.

N. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of the fee simple title to any Lot situated upon the Property, including the Declarant with respect to any unsold Lot, but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

O. "Plat" shall mean the plat of survey for Stuart Highlands Subdivision, Phase I, as recorded in Plat Hanger \_\_\_\_\_, Page \_\_\_\_\_, in the office of the Clerk of Superior Court of Fannin County, Georgia, and all plats of future phases.

P. "Private Drives" shall mean and refer to those certain portions of the Common Property owned, or to be owned, by the Association and used for pedestrian and/or vehicular access, if any.

Q. "Property" shall mean and refer to all property within the Community as shown on the Plat, and such additional real property as may be later included as future phases in accordance with this Declaration.

R. "Property Owners' Association" or "Association" shall mean and refer to the Stuart Highlands Property Owners' Association to be formed by the Declarant.

Section 2. Membership and Voting Rights in the Association. Each and every lot owner subject to this Declaration shall automatically, and by reason of such ownership, become a Member of the Property Owners' Association, provided that any such person or entity who holds an interest merely as a security for the performance of any obligation shall not be a Member. If two or more Lots are combined so as to serve as a residence Lot for one residence, the Owner shall have one vote per lot in all transactions and business of the association.

Section 3. Voting Rights.

A. The Property Owners' Association shall initially have two classes of membership, which shall be Class A Members and Class B Members. Class A Members shall be all of the Owners with the exception of the Declarant. The Class B Member shall be the Declarant. All Members shall be entitled to one (1) vote per Lot in which they hold the interest required for membership. When more than one person holds such interest or interests in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they among

themselves determine, but it no event shall more than one (1) vote be cast with respect to any such Lot.

B. Notwithstanding anything to the contrary herein, until such time as the Developer has sold all of its Lots in the Community, Declarant shall solely control the affairs of the Property Owners' Association, unless said powers shall be authorized, in writing, by the Declarant.

C. Notwithstanding anything to the contrary herein, for as long as Developer is the Owner of any Lot within the Community, no vote, decision, or action which requires the approval or a vote of a majority or more of the Members of the Property Owners' Association voting on said matter shall be effective or implemented until Declarant has approved of or consented to same in a writing directed to the Board of Directors of the Property Owners' Association.

Section 4. Declaration Superiority. Neither the Articles nor By-laws shall, for any reason, be inconsistent with this Declaration. In the event of any such inconsistency, the provisions of this Declaration shall prevail.

Section 5. Duties of the Association. The Property Owners' Association shall, in addition to such obligations, duties and functions as are assigned to it by other provisions of this Declaration, have the obligations, duties and functions (subject to the provisions of this Declaration), to do and perform each and every one of the following for the benefit of the Owners and for the maintenance, administration and improvement of the Community:

A. Enforcement. To take such action, whether or not expressly authorized herein or in any governing instrument, as may be reasonably necessary to enforce the restrictions, limitations, covenants, affirmative obligations, conditions and other provisions of this Declaration, and the Articles and By-laws.

B. Operation and Maintenance of Common Property. To own, operate, maintain and otherwise manage and/or provide for the operation, maintenance and management of the Common Property, together with all easements for operations and maintenance purposes and for the benefit of the Property Owners' Association or its Members over and within the Common Property; to keep all improvements of whatever kind and for whatever purpose from time to time located thereon in good order, conditions and repair, and to maintain any parking areas and streets free and clear from obstructions and in a safe condition for vehicular use at all times. The Property Owners' Association shall maintain and repair the Private Drives and pay all Common Expenses.

C. Water and Other Utilities. Acquire, provide and/or pay for water, sewer, garbage disposal, electrical, telephone, gas, cable television, and any other necessary utility services for the Common Property.

D. Taxes and Assessment. To pay all real and personal property taxes and assessments, if any, separately levied upon or assessed against the Property Owners' Association and/or any property owned by the Property Owners' Association. Such taxes and assessments may be contested or compromised by the Property Owners' Association provided, however, that they are paid or a bond insuring the payment is posted prior to the sale or other disposition of any property to satisfy the payment of such taxes.

E. Dedication for Public Use. To promptly dedicate any water, sewer, or other utility lines or facilities and appropriate easements as may be specified by Declarant or required by any applicable municipality, utility company, public authority, or similar agency or body as may be designated by Declarant or the Property Owners' Association.

F. Insurance. To obtain and maintain insurance as provided for by the Articles and By-laws or this Declaration.

G. Rule Making. To make, establish, promulgate, amend or repeal any rules and regulations as may be deemed necessary by the Property Owners' Association and in accordance with this Declaration.

H. Enforcement of Restrictions and Rules. To perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary or appropriate to enforce or effectuate any of the provisions of this Declaration and the rules and regulation of the Property Owners' Association.

Section 6. Powers and Authority of the Property Owners' Association. The Property Owners' Association shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Property Owners' Association under this Declaration, the Articles and By-laws, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Property Owners' Association including the following which are listed without intent to limit the foregoing articulation:

A. Assessments. To levy assessments on the Owners of the Lots and to enforce payment of such assessments, all in accordance with the provision of this Declaration.

B. Right of Enforcement. In its own name, on its own behalf or on behalf of any Owner or Owners, who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of any provision of this Declaration and the rules and regulations promulgated by the Property Owners' Association, and to enforce, by mandatory injunction or otherwise, all of the provisions thereof.

C. Easements and Right-of-Way. To grant and convey to any third party an easement in, on, over, and under the Common Property and the Private Drives located thereon for the purposes of constructing, erecting, operating or maintaining thereon, therein, or thereunder, (1) underground lines, cables, wires, conduits or other devices for the transmission of electricity and for lighting, heating, power, telephone, community television, radio and audio and antenna facilities and for other appropriate purposes; (2) public sewers, storm water drains and pipes, water systems, sprinkler systems, water, heating and gas lines or pipes; and (3) any similar public or quasi-public improvements or facilities.

D. Right of Entry. Without liability to Developer, any Owner, or its agents, independent contractors and employees, Developer and the Association reserves to itself, its designees, successors and assigns, easements, licenses, and rights and privileges of a right-of-way in, through, over, under and across the Community for the construction, maintenance and repair of utility lines, wires, pipes, conduits, cable television, sewers, and drainage lines and other improvements, which may from time to time be in or along the streets and roads or other areas of the Community. Developer also reserves the right for itself, its designees, successors and assigns, to continue to use the Community, and any Common Property, Private Drives, roadways, sales

offices, model homes, signs, flags, promotional material and parking spaces located in the Community, in its efforts to market Lots, land and Homes in the Community. This paragraph may not be amended without the prior written consent of the Developer. The Developer, by its execution of this Declaration, hereby grants to each Owner a non-exclusive perpetual easement for the maintenance, repair and replacement of water and sanitary sewer lateral pipes servicing the Lot and improvements thereon, which lateral pipes are located within the Common Property.

E. Maintenance and Repair Contracts. To contract and pay for, or otherwise provide for, the maintenance, restoration, and repair of all improvements located upon or within the Common Property, including the Private Drives.

F. Insurance. To obtain, maintain and pay for such insurance policies or bonds, whether or not required by this Declaration or the Articles or By-laws, as the Property Owners' Association may deem to be appropriate for the protection or benefit of the Property Owners' Association, the Members, the Board, the Owners, their tenants or guests, including but not by way of limitation, fire and extended coverage insurance covering the Common Property, liability insurance, worker's compensation insurance, and performance and fidelity bonds.

G. Utility Service. To contract and pay for, or otherwise apply for, any necessary utility services including, but without limitation, water (subject to the water specifications as below), sewer, garbage, electrical, telephone, cable television and gas services for the benefit of the Property Owners' Association.

H. Professional Services. To contract and pay for, or otherwise provide for, any necessary services of architects, engineers, attorneys, certified public accountants, and such other professional and non-professional services as the Property Owners' Association deems necessary.

I. Street Maintenance. To contract and pay for, or otherwise provide for, the construction, reconstruction repair, replacement, or refinishing of any Private Drives, parking areas, or other paved areas upon any portion of the Common Property not dedicated to any local, state or federal government agency.

J. Protective Services. To contract and pay for or otherwise provide for fire, security, and other such protective services as the Property Owners' Association shall from time to time deem appropriate for the benefit of the Community, the Owners, and their tenants and guests.

K. General Contracts. To contract and pay for, or otherwise provide such materials, supplies, furniture, equipment, and labor as and to the extent the Property Owners' Association deems necessary.

L. Liens. To pay and to discharge any and all liens from time to time placed or imposed upon any Common Property on account of any work done or performed by or on behalf of the Property Owners' Association in the fulfillment of any of its obligations and duties of ownership, maintenance, repair, operation or administration.

M. Controlled Access Provisions. To make decisions related to security measures, including, but not limited to access privileges of visitors or service personnel. These decisions shall not apply to Declarant or its successors or assigns, who shall have unlimited access as long as any Lots remain unsold by Declarant, its successors or assigns.

Section 7. Property Rights in Common Property.

A. Members' Easements of Enjoyment. Every Member shall have a nonexclusive right, license, privilege, and easement of enjoyment in and to the Common Property, and such easements shall be appurtenant to and shall pass with the title to every Lot. In addition, the Declarant does hereby grant unto the Owners of each Lot a non-exclusive easement in perpetuity for ingress and egress and over and across the Private Drives, streets, roads and walks in the Common Property for all lawful purposes.

B. Title to Common Property. The Declarant shall convey to the Property Owners' Association legal title to the Common Property, subject to the following covenant which shall be deemed to run with the land and shall be binding upon the Property Owners' Association, its successors and assigns:

In order to preserve and enhance the property values and amenities of the Community, the Common Property and all facilities now or hereafter built or installed thereon shall at all times be maintained in a first class manner, in good repair and condition and shall be operated in accordance with highest standards. The maintenance and repair of the Common Property shall include, but not be limited to, the repair of damage to the Private Drives, walkways, outdoor lighting, fences and landscape maintenance.

C. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

1. The right of the Property Owners' Association, in accordance with its Articles and By-laws, to borrow money for the purpose of improving the Common Property and in aid thereof, to mortgage said property.

2. The right of the Property Owners' Association to take such steps as reasonably necessary to protect the Common Property against foreclosure.

3. The right of the Property Owners' Association, as provided in its Articles and By-laws, to suspend the enjoyment right of any Member, except as to ingress and egress to and from such Member's Lot, for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations.

4. The right of the Property Owners' Association to dedicate or transfer all or any part of the Common Property to any public agency, authority, utility for the installation, maintenance, and inspection of lines and appurtenances for public and private water, sewer, drainage, cable television, telephone, electricity, gas and other utilities, and for completion of the Development. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication has been signed by two-thirds (2/3) of the Members entitled to vote and has been recorded; and unless notice of the proposed agreement and action thereafter is sent to every Member at least thirty (30) days in advance of any action taken.

5. The right of the holder of a mortgage encumbering the Common Property, upon foreclosure or proceeding in lieu of foreclosure, to enter upon and take possession of the Common Property, for the purpose of operating, administering and maintaining said

Common Property for the use and benefit of the Owners, subject to the terms, conditions and provisions of this Declaration.

D. Easements Reserved Unto Declarant Over Common Property and Development. The Declarant hereby reserves unto itself, its successor and assigns, all necessary licenses, rights, privileges and easements over, upon, under and across the Development, including but not limited to, (1) the right to use the said property for right-of-way and easements to erect, install, maintain and use electric and telephone poles, wires, cables, conduits, sewers, water mains, pipes, and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, cable, television, sewer, water other public convenience or development utilities; (2) the right to cut any trees, bushes or shrubbery, make any grading of the soil, or take any other similar action reasonably, necessary to provide economical and safe utility installation and to maintain reasonable standards of health, convenience, safety and appearance; (3) the right to locate thercon wells and pumping stations and all other water system equipment; (4) the right and easement of ingress and egress for purposes of development and construction and (5) such other rights as may be reasonably necessary to complete in an orderly and economic manner the development of all present and future phases of Stuart Highlands Subdivision; provided, however, that said reservation and right shall not be considered an obligation of the Declarant to provide or maintain any such utility, development, or service. Declarant also reserves the right to connect with and make use of the utility lines, wires, pipes, conduits, cable, television, sewers and drainage and other utility lines which may from time to time be in or along the streets and roads within the Development. Finally, the Declarant reserves the right to establish and continue to use any sales offices, signs, or parking spaces located in the Development in its effort to market the Development. The easements and rights-of-way herein reserved shall continue in existence in favor of the Declarant after conveyance of all Lots owned by Declarant until such time as such rights are specifically and expressly relinquished by Declarant by reference to this provision. This paragraph may not be amended without the consent of the Declarant.

E. Transfer of Easement by Declarant. The Declarant hereby covenants, for itself, its successors and assigns, that it will transfer the easements, licenses, rights and privileges reserved in this Declaration by Declarant to the Property Owners' Association upon the latter of 10 (ten) years from the date hereof or the sale by Declarant of the last Lot held for sale in the ordinary course of business by Declarant in any and all phases of the Development. Notwithstanding the above, Declarant, its successors and assigns, shall retain easement access rights for ingress, egress and utilities over and across the Development regardless of the ownership of Lots in the Development.

#### Section 8. Covenant for Assessments.

A. Personal Obligation of Assessments; Claim of Lien. Each Owner (with the exception of the Declarant) by acceptance of a deed therefor, whether or not it shall be so expressed in such deed; is deemed to covenant and agree to pay to the Property Owners' Association the following: (i) annual assessments or charges for the Common Expenses of the Association and other costs described in this Declaration; and (ii) special assessments for capital improvements and other expenses described in this Declaration. The annual and special assessments, together with interest and costs of collection, including reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, cost of collection, and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for such



delinquent assessments shall also pass to his successors in title, provided the Property Owners' Association has caused a claim of lien to be recorded in the Public Records of Fannin County giving notice to all persons that the Property Owners' Association is asserting a claim of lien upon the Lot prior to the conveyance of title to said Lot. Said claim of lien shall state the description of the residence, the name of the record Owner thereof, the amount due and the date when due, and the lien shall continue in effect until all sums secured by the lien have been fully paid. Such claims of lien shall be signed and verified by an officer of the Property Owners' Association or by a managing agent of the Property Owners' Association. Upon full payment, the party making payment shall be entitled to a recordable satisfaction of lien. Liens for assessment may be foreclosed on by suit brought in the name of the Property Owners' Association in like manner as a foreclosure of a mortgage on real property. In such foreclosure, the Owner of a residence and the Property Owners' Association shall be entitled, as a matter of law, to the appointment of a receiver to collect the same.

B. Purpose of Assessments. The assessments levied by the Property Owners' Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents in the Community, and in particular for the improvement and maintenance of property, services, and facilities devoted to the purpose and related to the use and enjoyment of the Common Property and of the Lots situated upon the Property, including but not limited to:

1. Payment of all Common Expenses;
2. Maintenance, improvement, and operation of drainage easements and systems;
3. Management, maintenance, improvement and beautification of roads, ponds, buffer strips and recreation areas and facilities (the Property Owners' Association shall have sole control over and responsibility for road maintenance throughout the development and specific to the road system as originally designated on Declarant's development plat of survey referred to above);
4. Payment to Stuart Mountain Hideaway Property Owners Association in the amount of \$500.00 per year for contribution to the maintenance and improvement of Stuart Mountain Road; and
5. Doing any other thing necessary or desirable, in the judgment of the Property Owners' Association, to keep the community neat and attractive or to preserve or enhance the value of the Property therein, or to eliminate fire, health or safety hazards, or, which in the judgment of said Property Owners' Association, may be of general benefit to the Owners or occupants of lands included in the Property.

C. Annual Assessments and Initial Assessments. Each Class A Member shall be required to pay an Annual Assessment in the amount of Three Hundred and No/100 Dollars (\$300.00) per year per lot owned, which shall be due annually. Said assessment shall be prorated and due at closing in the year of closing and shall become due each year thereafter on January 1<sup>st</sup> with a fifteen (15) day grace period. Any Class A Member that does not pay said annual assessment before the end of the grace period shall be subject to the penalties set forth in Section 1 of this Article.

D. Increase of Assessments. During the last quarter of each year, the Board of Directors of the Property Owners' Association shall meet and, after consideration of current maintenance costs and calculated needs of the Association, fix the actual assessment in advance for the next year. Any new annual assessments exceeding one hundred fifty percent (150%) of the assessment for the previous year shall have the approval of two-thirds (2/3) of the votes of the Members (if any) who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting and shall set forth the purpose of the meeting.

E. Special Assessments. In addition to the annual assessments authorized by the above sections, the Property Owners' Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Property and/or road system, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of a majority of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting and shall set forth the purpose of the meeting.

F. Quorum and Notice for any action as set forth in "Increase of Assessments" and "Special Assessments". Written notice of any meeting called for the purpose of taking any action authorized in this Article shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At such meeting, the presence of Members in person or by proxy entitled to cast a majority of all the votes of each class of membership shall constitute a quorum.

G. Uniform Rate of Assessments. Both annual and special assessments must be fixed at a uniform rate for all Lots, and shall be collected on an annual basis as described herein.

H. Certificate of Payment. The Property Owners' Association shall, upon demand at any time, furnish to any Owner liable for said assessment a certificate in writing and in recordable form, signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of and assessment therein stated to have been paid.

I. Effect of Nonpayment of Assessment; Personal Obligation; Lien; Remedies of the Association. If the assessments, initial, annual or special, are not paid on or before fifteen (15) days after the date when due, then such assessment shall become delinquent and shall, together with interest thereon and costs of collection thereof as hereinafter provided, thereupon become a continuing lien on the Lot for which such assessment is delinquent and such lien shall bind the then Owner, his heirs, devisees, personal representatives and assigns. If the such assessment is not paid within thirty (30) days after the date when due, the assessment shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum. The Property Owners' Association may bring an action of law against the Owner personally obligated to pay the same or to foreclose the lien against the property, in the same manner as foreclosure of a mortgage, and there shall be added to the amount of such assessment interest, the costs of the action for the collection of the assessment, including a reasonable attorney's fee costs and fees on appeal. Reasonable attorney's fees and costs of collection shall be recoverable whether or not suit is brought. If the Property Owners' Association files a claim of lien on the public records of

Fannin County, against any Lot, a Seventy-Five Dollar (\$75.00) lien fee may be charged and shall be added to the unpaid assessment and secured by the lien hereby created. Notwithstanding the above, during the period of Declarant's ownership of any Lot, no assessments shall apply to Declarant or any of the Lots owned by Declarant.

**ARTICLE II**  
**ROAD EASEMENTS**

Section 1.      Reservation By Developer of Road Easement.

A.       The Developer hereby reserves unto itself, its successors and/or assigns, all necessary licenses, rights, privileges and easements over, upon, under and across all property in the Development, including but not limited to: (1) the right to use said property for rights-of-way and easements to erect, install, maintain and use electric and telephone poles, wires, cables, conduits, sewers, water mains, pipes, and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, cable, television, sewer, water or other public conveniences or subdivision utilities; (2) the right to cut any trees, bushes or shrubbery, make any gratings of the soil, or take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, convenience, safety and appearance; (3) the right to locate thereon wells and pumping stations; (4) the right and easement of ingress and egress for purposes of development and construction; and (5) such other rights as may be reasonably necessary to complete in an orderly and economic manner the development of all present and future phases of said subdivision; provided, however, that said reservation and right shall not be considered an obligation of the Developer to provide or maintain any such utility, development, or service,

B.       The Developer also reserves the right to connect with and make use of utility lines, wires, pipes, conduits, cable, television, sewers and drainage and other utility lines which may from time to time be in or along the streets and roads within the property. Finally, the Developer reserves the right to establish and continue to use any sales offices, signs, or parking space located on the property, in its effort to market the development. The easements and rights-of-way herein reserved shall continue in existence in favor of the Developer until conveyance of all Lots have occurred and Developer has executed and recorded an extinguishment of easement with the office of the Clerk of Superior Court of Fannin County, Georgia.

Section 2.      Road Easements for Community.

A.       Developer does hereby establish and create for the benefit of the Association and for all Owners from time to time subject to this Declaration, and does hereby give, grant and convey to each of the aforementioned, a right-of-way easement for ingress and egress by vehicles or on foot, in, through, over, under and across the Private Drives and all streets, roads and walks within the Common Property (as they may be built or relocated in the future).

B.       The easement is granted notwithstanding any error or omission in any individual conveyance to a purchaser of a Lot, by the Developer, which might fail to expressly grant or reserve such an easement.

**ARTICLE III**  
**ARCHITECTURAL REVIEW COMMITTEE ("ARC")**

Section 1. Except for improvements constructed by Developer, no Home, building, fence, including chain link fences, wall or other structure shall be constructed, erected or maintained upon any Lot in the Community, nor shall any exterior addition, change or alteration therein, including a change of the building exterior paint color, be made within the Community until the plans and specifications (including, but not limited to, all exterior paint colors, etc.) showing the nature, kind, shape, height, materials and location of the same shall have been submitted to (with confirmation of receipt) and approved in writing as to the harmony of external design and location in relation to the surrounding structures and topography by the Board, or an architectural control committee composed of three (3) or more representatives appointed by the Board (the "ARC"). Nothing contained herein shall relieve the Owner from the responsibility of obtaining proper governmental approvals and permits.

Neither the Association, the Board nor the ARC shall be liable to any Owner in connection with the exercise or non-exercise of architectural control hereunder, or the approval or disapproval of any alteration, addition, improvement or change. Furthermore, any approval of any plans or specifications by the Board or the ARC shall not be deemed to be a determination that such plans or specifications are complete or do not contain defects, or in fact meet any standards, guidelines and/or criteria of the Association, the Board or the ARC, or are in fact architecturally or aesthetically appropriate, or comply with any applicable governmental requirements, and neither the Association, the Board nor the ARC shall be liable for any deficiency, or any injury resulting from any deficiency in such plans and specifications.

Section 2. Notwithstanding the foregoing, so long as Developer is the Owner of any Lot within the Community, architectural control and all powers described herein this Article shall be vested in Developer and not the Board, and during such period, all references contained in this Declaration to the Association, the Board, and/or the ARC shall be deemed to refer to Developer provided, however, that at any time, Developer may assign in writing its right to architectural control to the Association.

**ARTICLE IV**  
**RESTRICTIVE COVENANTS**

Section 1. The protective covenants and restrictions set forth herein shall apply only to the Lots.

Section 2. The exterior of all homes must be an approved log design or log siding design appropriate for the natural, rustic environment of the development. All homes shall be of a rustic style, and the plans for same must be approved by the Board or the ARC, as the case may be, as provided in Article III hereinabove. All exterior foundation materials shall be "rocked" or stucco in a manner to be consistent with the remainder of the dwelling. All dwellings shall be of quality workmanship.

Section 3. All residential structures shall be constructed in accordance with all local and state codes.

Section 4. Only one single-family residential dwelling per Lot shall be permitted. No mobile homes will be used or located on any lot at any time either temporarily or permanently. No old, new, complete or used home may be moved onto any Lot.

Section 5. All building construction shall be completed within twelve (12) months from the starting date of construction, unless otherwise approved, in writing, by the Developer. Construction on any Lot shall only be permitted during the hours of 7:00 a.m. and 7:00 p.m., Monday through Saturday. Construction shall be prohibited on Sunday. The construction site must be kept clean of debris and waste must be disposed of properly. Each construction site shall contain a portable toilet facility. Any damage to roads, adjacent properties or other common property shall be the responsibility of the Owner and builder.

Section 6. Except as otherwise provided herein, no structure of a temporary character, such as a mobile home, basement, camper, lean-to, tent, shack, garage, barn or other outbuilding will be used on any Lot at any time as a residence either temporarily or permanently.

Section 7. All Lots shall be used for residential purposes only and no business or business activity shall be carried on upon any Lot at any time, with the exception that short term rentals of homes in the Community shall be allowed for a period not to exceed thirty (30) consecutive days, and said homes are not to be used or rented as primary residences. For any rentals made, there shall be an adult over the age of twenty-five (25) years onsite at all times for which there is any person less than twenty-five (25) years of age onsite. The Owner of the home shall remain responsible for the conduct of guests and their compliance with these covenants. There shall also be an exception for home-based businesses involving no retail traffic or storage of inventory or equipment.

Section 8. All Lots are restricted to permanent housing with a minimum of 1200 square feet of enclosed heated living space in the main structure. The square footage mentioned above is exclusive of areas contained in open porches, carports, garages, and basements and refers to enclosed above-ground heated living area. The following restrictions also apply:

A. Roof material shall be an approved metal, shingle, shake shingle, or other specialty roof material approved by the Architectural Committee. No shiny metal roof material shall be allowed. All roof colors shall be approved by the Board or the ARC, as the case may be, as provided in Article III hereinabove, and such roof material and colors shall be rustic in nature to blend with the natural surroundings.

B. No building on any Lot shall be located within fifteen (15) feet from any Lot line, thirty-five (35) feet from any right of way, or fifty (50) feet from any creek or body of water.

C. Only one residence shall be constructed on any one Lot, provided, however, that the owner of any lot may erect a garage, guest house, or outbuilding for use in conjunction with such residence. Said garage, guest house or outbuilding shall be enclosed completely and must be fashioned in appearance and likeness to the design of the main residence. No prefabricated buildings, metal buildings nor carports shall be erected on any Lot.

Section 9. No signs of any type shall be allowed on any lot with the exception of a temporary sign offering all or a portion of the Property for sale and any sign used for reasonable address identification. "For sale" signs shall not be any larger than 36" x 36". An exception shall also be made for the Developer for the placement of signs advertising the Development.

Section 10. No noxious or offensive activities shall be permitted or carried on upon any Lot, nor shall anything be done thereof which may be or become an annoyance or nuisance to the

Community. No offensive, noisy or illegal activity shall be suffered or permitted upon any Lot, nor shall any lot be used for any illegal purpose. No recreational use of all terrain vehicles, dirt bikes, motorcycles or any similar type vehicles shall be permitted within the Development. Motorcycles shall be used within the Development for transportation only and shall not be operated in any manner that would be considered offensive or noisy. No outdoor light that shines onto another Lot causing annoyance to the other Owner shall be permitted nor shall loud music that carries and causes annoyance to another Owner be permitted. No hunting or discharging of firearms shall be permitted within the Community.

Section 11. No Owner may remove or top more than fifty percent (50%) of existing tree growth; said fifty percent to be distributed equally over the entire acreage of any Lot, with the exception that clear cutting shall be permitted for purposes of construction of a permanent dwelling house to an area not to exceed fifteen (15) feet out (in all directions) from the foundation of the structure, plus any attached decking. Only the Board or the ARC, as the case may be, may exceed these dimensions, with a fee due (an assessment of \$1,000.00 to the Association for each tree cut or topped in excess of these dimensions).

Section 12. No animals, livestock, poultry, or birds of any kind shall be raised, bred or kept on any Lot, with the exception of dogs, cats, and other domesticated household pets provided they are not kept, bred or maintained for commercial purposes. Such household pets must not constitute a nuisance or cause unsanitary conditions. All pets must be under the control of the owner at all times.

Section 13. No Lot shall be subdivided after the conveyance of same by the Developer, however, this provision shall not be interpreted to prevent the undersigned Developer from making modifications in the Plat as to Lot sizes or Lot lines.

Section 14. Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the Plat. Drainage flow shall not be obstructed nor be diverted from drainage or utility easements as designated above or on the recorded Plat, except, as the undersigned may deem necessary for the development of the Community.

Section 15. All fences shall be constructed with natural materials and must meet prior approval by the Board or the ARC, as the case may be, as provided in Article III hereinabove. No chain link or wire fencing shall be permitted.

Section 16. Each Lot and the improvements constructed thereon shall be maintained in a good, safe and attractive condition, and grass must be mowed on a regular basis. Each Lot shall be kept and maintained completely free of any junk, trash and garbage (including old vehicles and discarded appliances). Trash and garbage must be properly disposed of in containers designed for that purpose, which shall be stored behind the main dwelling. All machinery, boats, trailers, recreational vehicles or automobiles in storage will be located in a garage or basement. No inoperative cars, motorcycles, trucks or other types of vehicles shall be allowed to remain either on or adjacent to any Lot for a period in excess of forty-eight (48) hours; provided, however, that this provision shall not apply to any such vehicle being kept in a garage or basement. There shall be no major repair performed on any motor vehicle on or adjacent to any Lots in the Community. All vehicles shall have current license plates.

Section 17. All driveways shall be maintained in good order. To prevent mud and other debris from being tracked onto the roads in the Community, a construction drive must be installed prior to beginning construction on the foundation and maintained until the permanent

drive is completed. All permanent drives must be surfaced in a fashion to minimize impact on Community roads at the point of intersection with same.

Section 18. No travel trailer or motor home (unless, said vehicle is housed in a completely enclosed garage), truck (excluding pickup trucks), camper, tent, or other similar vehicle shall be placed on any Lot at any time for a period exceeding forty-eight (48) hours. No industrial, commercial or farm equipment or vehicles, including without limitation, dump trucks, moving vans, step vans, buses and lowboy trailers, shall be allowed to park or remain on any Lot, except for so long as necessary for use in connection with ongoing construction.

Section 19. No oil drilling, quarrying or mining operations of any kind shall be permitted upon any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted on any Lot.

Section 20. Except during the construction of permanent improvements thereon, no Owner shall excavate or extract earth from any Lot for any business or commercial purpose or otherwise. No elevation changes shall be permitted which materially affect surface grade of surrounding Lots unless approved by the Board or the ARC, as the case may be.

Section 21. All mailbox posts shall be of "T" type construction and shall be constructed of cedar or pressure-treated material. Said mailbox post may be painted or stained to match the Home.

Section 22. All clearing of Lots, building plans and specifications, including but not limited to architectural design, exterior color, finish material and placement of dwelling upon a Lot, will be subject to written approval of the Board or the ARC, as the case may be, as provided in Article III hereinabove. No exception will be granted.

Section 23. No satellite dishes shall be placed in the front of any dwelling, and must be kept out of sight in the rear of the residence, unless otherwise approved by Board or the ARC, as the case may be, as provided in Article III hereinabove. No satellite dish larger than thirty-six inches (36") in diameter shall be allowed. No external antennas shall be permitted on any Lot. No antenna or satellite dish may be visible from any subdivision road.

Section 24. No motorized boat or gasoline powered vessel will be allowed on any body of water within the Community. No boat dock shall be placed on any Lot without the prior written permission of the Board or the ARC, as the case may be, as provided in Article III hereinabove. Fishing and boating are allowed only on the Common Property.

Section 25. No cement trucks shall be allowed to dump excess concrete nor shall delivery trucks wash out any remaining residue on the Property, except that the dumping or washing of concrete residue shall be permitted on the Lot to which the delivery was made. The Owner of said Lot shall be responsible for any such dumping.

Section 26. No clotheslines shall be permitted on any Lot. No garments, laundry, rugs or other articles may be aired or dried outside on any Lot.

Section 27. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from date at which time said covenants shall be automatically extended for successive periods of ten (10) years unless an

instrument, signed by the majority of the then recorded owners of the land agree to change said covenants in whole or in part, is executed and recorded. These covenants cannot be amended or changed in any way prior to that time unless an instrument is signed by all of the Owners in the Community.

Section 28. Any Owner of a Lot within the Community may enforce the covenants and restrictions by proceeding at law or in equity against any person or persons or entity violating or attempting to violate any covenant or restriction either by seeking to restrain such violation or seeking damages. The Owners are not under any mandatory duty to seek enforcement of any of these covenants as set forth herein. The failure of the Developer, the Association or of any Owner to enforce any of said covenants and restrictions and other provisions should in no event be deemed a waiver of the right to do so thereafter.

Section 29. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

Section 30. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

#### ARTICLE V INSURANCE

Section 1. Purchase. Any insurance policies covering the Common Property shall be purchased by the Association and shall be issued by an insurance company authorized to do business in Georgia and has an office or agent located in the vicinity of the Community.

Section 2. Premiums. Premiums for any insurance policies purchased by the Association shall be paid by the Association as a Common Expense.

#### ARTICLE VI RECONSTRUCTION OR REPAIR AFTER CASUALTY

Section 1. Determination to Reconstruct or Repair. If any part of the Common Property is damaged or destroyed by casualty, the damaged property shall be reconstructed or repaired, unless two-thirds (2/3) of the Owners vote to the contrary.

Section 2. Plans and Specifications. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original improvements. Any reconstruction or repair must be in accordance with the ordinances of the controlling government authority, and must be approved by the controlling government authority or its appropriate review committee where required by such ordinances. Any reconstruction or repair must be in conformance with the requirements of any controlling government authority, and where required appropriate permits shall be obtained.

Section 3. Responsibility. The responsibility for reconstruction and repair after casualty shall be that of the Association.

Section 4. Estimates of Cost. Immediately after casualty damage to property for which the Association has the responsibility of reconstruction and repair, the Association shall



obtain reliable and detailed estimates of the cost to rebuild or repair from one or more reliable licensed contractors, and shall submit copies of all acceptable estimates to the Insurance Trustee.

Section 5. Assessments. If the proceeds of insurance are not sufficient to defray the estimated cost of reconstruction and repair by the Association, or if at any time during or after the reconstruction and repair the funds for the payment of the cost thereof are insufficient, a special assessment shall be made against all Lots equally, in sufficient amounts to provide funds to pay such costs.

Section 6. Construction Funds. The funds for payment of costs of reconstruction and repair after casualty shall consist of any proceeds of insurance and funds collected by the Association from assessments against Owners, and shall be disbursed in payment of such costs in the following manner:

A. Association. The Association shall hold the sums paid upon such assessments and disburse the same in payment of the costs of reconstruction and repair in the following manner and order:

1. Association Lesser Damage. If the amount of the estimated costs of reconstruction and repair is less than Twenty-Five Thousand Dollars (\$25,000.00), then the construction funds shall be disbursed in payment of such costs upon the order of the Association.

2. Association Major Damage. If the amount of the estimated costs of reconstruction and repair is more than Twenty-Five Thousand Dollars (\$25,000.00), then the construction funds shall be disbursed in payment of such costs in the manner required by the Association and upon approval of an architect qualified to practice in the State of Georgia and employed by the Association to supervise the work.

3. Surplus. It shall be presumed that the first monies disbursed shall be from the insurance proceeds. If there is a balance in the construction fund after payment of all costs of reconstruction and repair for which the fund is established, such balance shall be distributed to the Association.

## ARTICLE VII GENERAL PROVISIONS

Section 1. Execution of Documents Required by Fannin County, Georgia. The Developer's plan for the development of the Community may require from time to time the execution of certain documents required by the County. To the extent that said documents require the joinder of any or all Owners in the Community, each of said Owners, by virtue of their acceptance of a deed to their respective Lot, does irrevocably give and grant to the Developer, or any of its officers individually, full power of attorney to execute said documents as their agent and in their place and stead.

Section 2. Enforcement. The Association, or any Owner, shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, court costs and reasonable attorneys' fees for any proceeding to enforce this Declaration, including any appeal therefrom, shall be borne by the Owner(s) against whom the suit has been filed. Failure by the

Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 3. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 4. Duration and Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time, they shall be automatically extended for successive periods of twenty (20) years. This Declaration may be amended by an instrument signed by the Owners of seventy-five percent (75%) or more of the Lots, or by a vote of ninety percent (90%) of a quorum of Owners present in person or by proxy at a duly called regular or special meeting of the members of the Association. Notwithstanding anything to the contrary herein, Developer will have the right to amend this Declaration without the consent of any of the Owners for clarification purposes only; provided, however, Developer owns at least one (1) Lot in the Community. Any amendment to this Declaration shall comply with all applicable codes, laws, regulations and ordinances then in place and must be recorded in the office of the Clerk of the Superior Court of Fannin County, Georgia.

Section 5. Damage or Destruction to Common Property. Each Owner shall be liable to the Association for any damage to the Common Property not fully covered by collected insurance which may be sustained by reason of the negligence or willful misconduct of said Owner or of his family, tenants, guests and invitees, both minor and adult. Notwithstanding the foregoing, the Association reserves the right to charge such Owner a special assessment equal to the increase, if any, in the insurance premium directly attributable to the damage caused by such Owner. The cost of correcting such damage shall be a special assessment against the Lot of such Owner and may be collected as provided herein for the collection of assessments.

Section 6. Release of Liability. Declarant shall in no way be held liable or subject to any law suit, regardless of the type, from anyone in regards to or in connection with the Development of the Property upon the Developers sale of all Lots within Community. Declarant hereby states that at time of recordation of this agreement they have complied with all Fannin County Land Development laws and regulations for development of said Property, and should any new purchaser of a Lot within said subdivision not comply with said county laws and regulations for any reason, Declarant shall in no way be held responsible or liable, and shall be fully released of any liability thereof.

IN WITNESS WHEREOF, LPY REAL ESTATE INVESTMENT CORP. has caused these Covenants, Conditions, Restrictions and Easements for STUART HIGHLANDS SUBDIVISION and Declaration of Property Owners' Association to be executed the day and year first written above.

Signed, sealed and delivered in the presence of:

Witness

Notary Public



LPY REAL ESTATE INVESTMENT CORP.,  
a Georgia corporation

By:

John David Gibbs, Jr., President