

**DECLARATION OF PROTECTIVE COVENANTS**

**FOR**

**MILFORD WOODS**

THIS DECLARATION is made on the date hereinafter set forth by Torrey/Cobb, L.P., a Georgia limited partnership ("Declarant");

**W I T N E S S E T H**

WHEREAS, Declarant is the owner of the real property described in Exhibit "A" of this Declaration (or, if not the owner, Declarant has the written consent of the owner to subject such property to the provisions of this Declaration); and

WHEREAS, Declarant desires to subject the real property described in Exhibit "A" to the provisions of this Declaration to create a residential community of single-family housing and to provide for the subjecting of other real property to the provisions of this Declaration;

NOW, THEREFORE, Declarant hereby declares that the real property described in Exhibit "A" of this Declaration, including the improvements constructed or to be constructed thereon, is hereby subjected to the provisions of this Declaration. Such real property, together with such portions of the real property described on Exhibit "B" which may be submitted to this Declaration by Declarant as provided in Article IX, shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens, hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property hereby or hereafter made subject to this Declaration. This Declaration shall be binding on all persons having any right, title, or interest in all or any portion of the real property now or hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall inure to the benefit of each and every owner of all or any portion thereof.

**Article I**  
**DEFINITIONS**

The following words, when used in this Declaration or in any Supplementary Declaration (unless the context shall prohibit), shall have the following meanings:

1.1. "Area of Common Responsibility": The Common Property, together with such other areas, if any, for which the Association has responsibility pursuant to this Declaration, any Supplementary Declaration, recorded plat, or other applicable covenants, contract, or agreement.

1.2. "Association" shall mean Milford Woods Community Association, Inc., a Georgia nonprofit corporation, its successors and assigns.

1.3. "Board of Directors" or "Board" of the Association shall be the appointed or elected body, as applicable, having its normal meaning under Georgia law.

1.4. "Bylaws" shall refer to the Bylaws of Milford Woods Community Association, Inc., attached to this Declaration as Exhibit "C" and incorporated herein by this reference.

1.5. "Common Property" shall mean any and all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners.

1.6. "Community" shall mean and refer to that certain real property and interests therein described in Exhibit "A," attached hereto, and (i) such additions thereto as may be made by Declarant by Supplementary Declaration of all or any portion of the real property described in Exhibit "B" attached hereto; and (ii) such additions thereto as may be made by the Association by Supplementary Declaration.

1.7. "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association. Such determination, however, must be consistent with the Community-Wide Standard originally established by the Declarant.

1.8. "Declarant" shall mean and refer to Torrey/Cobb, L.P., a Georgia limited partnership and its successors-in-title and assigns, provided any successor-in-title or assign shall acquire for the purpose of development or sale all or any portion of the remaining undeveloped or unsold portions of the real property described in Exhibits "A" or "B" attached hereto. The instrument of conveyance to any successor-in-title or assign shall designate such successor-in-title or assign as the "Declarant" hereunder by the grantor of such conveyance, which grantor shall be the "Declarant" hereunder at the time of such conveyance. Upon such designation of such successor Declarant, all rights of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the property described in Exhibits "A" and "B," attached hereto, which is now or hereafter subjected to this Declaration, there shall be only one (1) "Declarant" hereunder at any one point in time.

1.9. "Lot" shall mean any plot of land within the Community, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single-family dwelling site as shown on a plat recorded in the land records of the county where the Community is located. The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, all of the right, title, and interest of an Owner in the Common Property, which shall include, without limitation, membership in the Association.

1.10. "Mortgage" means any mortgage, security deed, deed of trust, and any and all other similar instruments used for the purpose of encumbering real property in the Community as security for the payment or satisfaction of an obligation.

1.11. "Mortgagee" shall mean the holder of a Mortgage.

1.12. "Occupant" shall mean any Person occupying all or any portion of a Lot or other property located within the Community for any period of time, regardless of whether such Person is a tenant of the Owner of such property.

1.13. "Owner" shall mean and refer to the record owner, whether one or more Persons, of the fee simple title to any Lot located within the Community, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation.

1.14. "Person" means any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, or other legal entity.

1.15. "Supplementary Declaration" means an amendment or supplement to this Declaration which subjects additional property to this Declaration or imposes, expressly or by reference, additional restrictions and obligations on the land described therein, or both.

1.16. "Total Association Vote" means all of the votes attributable to members of the Association (other than votes of Declarant, so long as Declarant has the right to appoint and remove the directors of the Association) and the consent of Declarant (so long as Declarant has the right to appoint and remove the directors of the Association).

## **Article II** **PROPERTY RIGHTS**

2.1. Common Property. Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to each Lot, subject to:

(a) This Declaration and any other applicable covenants;

(b) Any restrictions or limitations contained in any deed conveying such property to the Association;

(c) The right of the Board to adopt rules regulating the use and enjoyment of the Common Property;

(d) The right of the Association to suspend the voting rights of a Lot Owner for any period during which any assessment against such Owner's Lot which is hereby provided for remains unpaid and for a reasonable period of time for an infraction of the Declaration, By-Laws, or rules and regulations; and

(e) The right of the Association to mortgage, dedicate or transfer all or any portion of the Common Property subject to such conditions as may be agreed to by the members of the Association; provided, no such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by the affirmative vote of at least two-thirds (2/3) of the Total Association Vote, excluding the votes held by the Declarant.

Any Lot Owner may delegate such Owner's right of use and enjoyment in and to the Common Property and facilities located thereon to the members of such Owner's family and to such Owner's tenants. If an Owner leases a Lot, such Owner shall be deemed to have made a delegation of all such rights to the occupants of such Owner's Lot.

2.2. No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Property. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

2.3. Condemnation. In the event of a taking by eminent domain of any portion of the Common Property on which improvements have been constructed, then, unless within sixty (60) days after such taking, at least seventy-five percent (75%) of the Total Association Vote shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Property to the extent lands are available therefor. The provisions of Section 8.1(c) applicable to Common Property improvements damage, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

### **Article III** **ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

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

3.2. Voting. Members shall be entitled to one (1) vote for each Lot owned. When more than one (1) Person holds an ownership interest in any Lot, the vote for such Lot shall be exercised as those Owners themselves

determine and advise the Secretary prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended in the event more than one (1) Person seeks to exercise it.

#### **Article IV** **ASSESSMENTS**

4.1. Purpose of Assessment. The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of Lots, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board.

4.2. Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) annual assessments or charges; (b) special assessments, such assessments to be established and collected as hereinafter provided; and (c) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this Declaration. All such assessments, together with late charges, interest, not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum on the principal amount due, costs, including, without limitation, reasonable attorney's fees actually incurred, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with late charges, interest, costs, including, without limitation, reasonable attorney's fees actually incurred, shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment fell due. Each Owner shall be personally liable for the portion of each assessment coming due while the Owner of a Lot, and each grantee of an Owner shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings or deed in lieu of foreclosure.

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

Annual assessments shall be levied equally on all similarly situated Lots and shall be paid in such manner and on such dates as may be fixed by the Board, which may include, without limitation, acceleration, upon ten (10) days' written notice, of the annual assessment for delinquents. Unless otherwise provided by the Board, the assessment shall be paid in annual installments.

4.3. Computation. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year, which shall include a capital contribution or reserve in accordance with a capital budget separately prepared. The Board shall cause the budget and the assessments to be levied against each Lot for the following year to be delivered to each member at least thirty (30) days prior to the end of the current fiscal year. The budget and the assessment shall become effective unless disapproved at a meeting by a majority of the Total Association Vote. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

4.4. Special Assessments. In addition to the other assessments authorized herein, the Association may levy special assessments from time to time if approved at a meeting by two-thirds (2/3) of the Total Association Vote. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

4.5. Lien for Assessments. All sums assessed against any Lot pursuant to this Declaration, together with late charges, interest, costs, including, without limitation, reasonable attorney's fees actually incurred, as provided herein, shall be secured by a lien on such Lot in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Lot, except for (a) liens for ad valorem taxes; or (b) liens for all sums unpaid on a first Mortgage or on any Mortgage to Declarant duly recorded in the land records of the county where the Community is located and all amounts advanced pursuant to such Mortgage and secured thereby in accordance with the terms of such instrument.

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

4.6. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments or installments thereof which are not paid when due shall be delinquent. Any assessment or installment thereof delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may from time to time determine. The Association may cause a notice of delinquency to be given to any member who has not paid within ten (10) days following the due date. If the assessment is not paid within thirty (30) days, a lien, as herein provided, shall attach and, in addition, the lien shall include interest, not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum on the principal amount due, all late charges from the date first due and payable, all costs of collection, including, without limitation, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid after sixty (60) days, the Association may, as the

Board shall determine, institute suit to collect such amounts and/or to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against such Owner personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the same.

No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot. No diminution or abatement of any assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

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

4.7. Date of Commencement of Assessments. The assessments provided for herein shall commence as to a Lot subject to this Declaration on the first day of the month following the conveyance of such Lot to a Person who has not purchased such Lot for the purpose of construction of a residence and resale of such Lot and residence. Lots which have not been so conveyed shall not be subject to assessment. Assessments shall be due and payable in a manner and on a schedule as the Board of Directors may provide. The first annual assessment shall be adjusted according to the number of months then remaining in that fiscal year.

4.8. Specific Assessments. The Board shall have the power to specifically assess pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. Fines levied pursuant to Section 12.1 of this Declaration and the costs of maintenance performed by the Association which the Owner is responsible for under Sections 5.1 and 5.2 of this Declaration shall be specific assessments. The Board may also specifically assess Owners for the following Association expenses (except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association as provided herein):

(a) Expenses of the Association which benefit less than all of the Lots may be specifically assessed equitably among all of the Lots which are benefitted according to the benefit received.

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

4.9. Budget Deficits During Declarant Control. For so long as the Declarant has the authority to appoint the directors and officers of the Association, Declarant may: (i) advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for capital reserves), and the sum of the annual, special and specific assessments collected by the Association in any fiscal year, and such advances shall be evidenced by promissory notes from the Association in favor of the Declarant; or (ii) cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for such a loan in the local area of the Community. The Declarant in its sole discretion may guarantee repayment of such loan, if required by the lending institution, but no Mortgage secured by the Common Property or any of the improvements maintained by the Association shall be given in connection with such loan.

#### Article V

#### MAINTENANCE; CONVEYANCE OF COMMON PROPERTY TO ASSOCIATION

5.1. Association's Responsibility. Association maintenance shall be performed consistent with the Community-Wide Standard. The Association shall maintain, repair, and replace of all landscaping and improvements situated on the Area of Common Responsibility. The Area of Common Responsibility shall include, without limitation, (a) any Common Property owned by the Association, (b) all entry features and adjacent landscaping, and boundary fences or screening installed by Declarant, regardless of whether such are located on Common Property or a Lot, as such may be designated as an "Association Landscape Easement" on the recorded subdivision plat, in a deed of conveyance of a Lot to an Owner, or by recorded easement, and (c) all lakes, ponds, dams and appurtenant structures and fences, storm water detention or water drainage facilities located in or serving the Community, if and to the extent such improvements and facilities are not maintained by a public entity, owners of property outside of the Community, or other owners associations. Such maintenance shall include, without limitation, the expenses for water, gas, and electricity, if any, provided to all entry features, whether or not located on the Common Property or a Lot. Additionally, the Association shall maintain all property outside of Lots located within the Community which was originally maintained by Declarant.

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