

DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR CANAAN WALK SUBDIVISION 20

THIS DECLARATION, made on the date hereinafter set forth by CANAAN WALK HOMEOWNERS ASSOCIATION, INC., a Georgia non-profit Corporation, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is a homeowner's association comprised of all the owners of certain property in Land Lots 120 and 129 of the 144F District, County of Fulton, State of Georgia, which is more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference

NOW THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each such party.

ARTICLE I
DEFINITIONS

Section 1. "Association" shall mean and refer to **CANAAN WALK HOMEOWNERS ASSOCIATION, INC.**, the homeowners' association created and incorporated pursuant hereto and in conjunction herewith, its successors and assigns. Said Association shall be a Georgia non-profit corporation.

Section 2. "Owners" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties (as defined below), including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Declarant" shall mean and refer to **CANAAN WALK HOMEOWNERS ASSOCIATION, INC.**, a Georgia non-profit Corporation.

Section 5. "Common Area" or "Common Property" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

- a. A perpetual easement for the maintenance of exterior entryway identification on, over and through the following described property: Lots 1, and 3, as more particularly depicted on the above referenced recorded plat.
- b. A perpetual easement for the establishment and maintenance of, and access to, all detention ponds on, over and through the following described property: Lots 2, 10, 11, 13, 14, 23, 24, 31, 32, 38, 39, 44 as more particularly depicted on the above referenced recorded plat.
- c. A perpetual easement for the access to adjoining property over and through the following described property: Lots 3, 37 and 38, as more particularly depicted on the above referenced recorded plat.

Said Common Area shall be subject to this Declaration, and by this reference is hereby made subject thereto, as well as all easements, conditions, encumbrances of record and/or contained or referred to in said recorded plat. Original Declarant expressly reserved from any grant of the Common Area the rights to create easements in, over and through the Common Area for utilities, walks, trails, roads, improvements, ingress, egress and maintenance of any and all such items; said rights shall expire in Original Declarant and pass to the Association at such time as Original Declarant owns no Lot in the Subdivision.

Section 6. "Lot" shall mean and refer to any delineated and numbered plat of land shown upon any recorded subdivision map of the Properties and such additions thereto as may hereafter be brought within the jurisdiction of the Association with exception of the Common Area.

Section 7. "Original Declarant" shall mean and refer to, as the case may be, BENCHMARK ENTERPRISES, INC. and BENCHMARK UNLIMITED, INC., and the successors in title and assigns thereof provided any such successor in title and assign shall acquire for the purpose of development or sale all or any portion of the remaining undeveloped property or unsold property subjected hereto, and provided further that such successor in title designated by the then-Declarant in the instruments of conveyance or a subsequent instrument executed by the former Declarant, recorded for the purpose of so designating it as the new Declarant, and provided further that upon such designation all rights of the former Declarant shall cease in favor of those of the successor Declarant. Should any of the remaining undeveloped or unsold portions of the real property described herein and subjected hereto become subject to a first lien security instrument given by Original Declarant to secure a development loan, then all rights, privileges and options herein reserved to Original Declarant including specifically, without limiting the generality of the foregoing, the Class B membership in the Association, shall inure to the

benefit of any purchaser at any judicial sale of the Property pursuant to the power of sale contained in such security instrument.

Section 8. "Architectural Control Committee" and "Committee" are used interchangeably, and shall mean and refer to Original Declarant, Stephen Boggs, L. Kirkland Boggs and Lois Hanson, and such other persons, or successor to such named person, as Original Declarant may appoint during such time as Original Declarant owns any lot in the Subdivision upon which construction of a dwelling has not been fully completed; at such time as Original Declarant shall own no lot in the Subdivision upon which construction of a dwelling has not been completed, or at such earlier date as Original Declarant, by filing a written instrument so indicating for record in the Superior Court of Fulton County, Georgia the membership of the Architectural Control Committee shall be appointed by the Board of Directors of the Association.

Section 9. "Board of Directors" shall mean and refer to the board of the directors of the Canaan Walk Homeowners Association, Inc., as the membership may elect from time to time.

Section 10. "Subdivision" shall mean and refer to the subdivided lots in **CANAAN WALK SUBDIVISION** above-referenced (including any duly authorized amendments thereto), the Common Area, the streets, road, amenities and all areas subject hereto, and such additions thereto as may hereafter be brought within the jurisdiction of the Association, as the context shall require.

Section 11. "Person" shall mean and refer to any natural person, entity, association, partnerships joint venture or trustee.

Section 12. "Insurance" shall mean and refer to policies of insurance which the Association may procure, including but not limited to policies of insurance naming the Association, its officers, directors and employees and insuring against liability incurred in the operations of the Association including but not limited to liability arising out of the ownership and maintenance of the Common Area.

Section 13. "Homeowner Fees" of "Homeowner Assessment" shall mean and refer to those fees, charges, and assessments levied and established by the Board of Directors, acting on behalf of the Association, described in Article IV below, or the membership of the Association acting in accordance with the covenants, restrictions, and conditions herein.

ARTICLE II PROPERTY RIGHTS

Section 1. **Owner's Easements of Enjoyment:** Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to suspend the voting rights of an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(b) The right of Original Declarant, during such time as there is a Class B membership, to dedicate or transfer any roadway, right of way, sewer or water line or system or easement therefore, located in, over, through or under the Common Area to any public agency, authority or utility, and the right of the Association thereafter, to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by members. No such dedication or transfer by the Association shall be effective unless an instrument agreeing to such dedication or transfer signed by 2/3rds of each class of members and 2/3 of all holders of first lien security deeds has been recorded.

Section 2. Delegation of Use: Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his, family, his tenants, or contract purchasers who reside on the property.

Section 3. Rules and Regulations. Reasonable rules and regulations concerning the use of the Common Property and facilities located thereon may be made and amended from time to time by the Board of Directors of the Association; provided that copies of such regulations and amendments thereto shall be furnished by the Association to all Lot Owners. Such regulations shall be binding upon the Lot Owners, their families, tenants, guests, invitees and agents, until and unless such regulation, rule or requirement be specifically overruled, canceled or modified in a regular or special meeting by the vote of Class A members holding a majority of the total votes in the Association and by the vote of the Class B member so long as such membership shall exist. Failure to abide by any such regulation, rule or requirement shall be grounds for and action to recover damages, or obtain injunctive and equitable relief or both.

Section 4. Recorded Plats. Lots subjected to this Declaration shall be subject to those easements, if any, shown or set forth on any recorded plat thereof.

Section 5. Water Lines, Storm Drainage and Sanitary Sewer Systems. Water Lines, storm drainage systems and sanitary sewer systems may be located over, across, upon or under certain Lots and other portions of the Development. Except with respect to any systems dedicated to, or owned, operated or maintained by a governmental authority, any such storm drainage and sanitary sewer systems shall be maintained in good order and repair by the Association. To the extent required to effectuate the foregoing plan, there shall be an easement in favor of each Lot for the purposes of providing connection of that Lot with the water line, storm drainage and sanitary sewer system most convenient thereto. Each Lot and the Common Property shall be subject to easements in favor of all the other Lots providing for the passage through any portion of such Lot or Common Property of necessary water lines, storm drainage systems and sanitary sewer systems located in or under building setback areas, or in areas designated as easements for same on the recorded plat. Original Declarant has hereby specifically reserved to itself, and

established for the benefit of the Association after Cessation of the Class B membership, an easement to inspect, repair, replace and maintain any private (undedicated) storm drainage system now constructed and installed in the Development. This easement shall include the right of the Association to add to and supplement the existing storm drainage system, and also the right of access, ingress and egress to carry out the functions authorized by this easement. All of the foregoing easements are granted and reserved subject to the condition that their use and enjoyment shall not materially interfere with the use, occupancy or enjoyment of all or any part of the Lots or the Common Property servient to such easements or to which such easements are appurtenant, and the obligation to restore the affected properties of any Lot Owner to the condition in which they were prior to such action, excluding from such obligation to restore the affected properties of any Lot Owner to the condition in which they were prior to such action, excluding from such obligation to restore growing or mature trees.

Section 6. Access to Common Property. The Association shall be responsible for the maintenance, in a neat and attractive condition of the Common Property and all improvements located thereon. The Association shall have an easement of access, ingress, and egress over the Lots subjected to this Declaration as shall be reasonably necessary to permit the access, ingress and egress to and from portions of the Common Property of persons and equipment employed or used by the Association in the performance of its duties hereunder. This easement shall be exercised in such a manner as not to materially interfere with the use, occupancy or enjoyment of the property servient to this easement.

Section 7. Annexation Without Approval of Class A Membership.

(a) As the owner thereof or if not the owner with the consent of the owner thereof, Original Declarant shall have the unilateral right, privilege and option from time to time and at any time until such time as Declarant shall voluntarily expressly relinquish in writing such right, privilege and option, or until 5 Years (from the date of the original declaration in favor of Original Declarant), whichever first occurs, to subject all or any portion of the real property described in Exhibit "A" attached hereto and by reference made a part hereof to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the office of the Clerk of the Superior Court of the County in which the Development is located a supplementary declaration in respect to the property being annexed. Any such annexation shall be effective upon the filing for record of such supplementary declaration unless otherwise provided therein.

(b) The rights reserved unto Original Declarant to subject additional land to the Declaration shall not, and shall not be implied or construed so as to, impose any obligation upon Original Declarant to subject any of such additional land to this Declaration or to the jurisdiction of the Association, nor shall such rights impose any obligation on Original Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land, nor impose upon Original Declarant or any subsequent owner limitations on the uses consistent with the covenants and restrictions imposed hereunder.

Section 8. Annexation With Approval of Class A Membership- Subject to the consent of the owner thereof and also subject to the consent of Original Declarant so long as Original Declarant shall own any Lot in the Subdivision, or any property described in Exhibit "A" hereto, upon the affirmative vote of a majority of the Class A members of the Association present or represented by proxy at a meeting duly called for such purpose, the Association may annex other real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the office of the Clerk of the Superior Court of the County in which the community is located a supplementary declaration in respect to the property being annexed. Any such supplementary declaration shall be signed by the President and Secretary of the Association and, must be approved in writing therein by the Original Declarant in order to be effective, so long as Original Declarant shall own any Lot in the Subdivision, or any property described in Exhibit "A" hereto; any such annexation shall be effective upon the filing for record of such supplementary declaration unless otherwise provided therein. The time within which and the manner in which notice of any such meeting of the Class A members of the Association called for the purposed of determining whether additional property shall be annexed, and the quorum required for the transaction of business at any such meeting, shall be specified in the By-Laws of the Association.

Section 9. Partition. Except as otherwise herein specifically provided, the Common Property shall remain undivided and no Lot Owner nor any other person shall bring any action for partition or division of the whole or any part thereof without the written consent of all owners of all portions of the property located within the Development and without the written consent of all holders of all mortgages encumbering any portion of the property, including but not necessarily limited to the Lots, located within the Development.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Original Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Original Declarant and shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership when the total votes outstanding in the Class A membership equal to the total votes outstanding in the Class B Membership. Upon the cessation and conversion of the Class B membership, the Original Declarant shall be entitled to one vote in the Association for each lot owned by Original Declarant.

Section 3. Casting of Votes. Subject to the provisions of this Declaration and the articles of incorporation, the votes of the members shall be cast under rules and procedures as may be prescribed in the By-Laws of the Association, as amended from time to time, or by law.

Section 4. Amplification. The provisions of this Article are to be amplified by the Articles of Incorporation and By-Laws of the Association; provided, however, that no such amplification shall substantially alter or amend any of the rights or obligations of the Owners of Lots as set forth herein. In the event of any conflict or inconsistencies between this Declaration, the Articles of Incorporation or the By-Laws of the Association, first this Declaration and then the Articles of Incorporation (in that order) shall prevail.

ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENT

Section 1. Effect of Non-Payment of Assessments: Remedies of the Association. Any assessment, or portion thereof not paid when due shall be delinquent. If the same is not paid within five (5) days after the due date, then a late charge equal to ten (10%) percent of the amount thereof or \$5.00 whichever is greater shall also be due and payable to the Association. If any assessment or portion thereof is delinquent for a period of more than five days, then if not paid within ten days after written notice is given to the Lot Owner to make such payment, the entire unpaid balance of the annual assessment may be accelerated at the option of the Board of Directors and be declared due and payable in full. Any assessment or portion thereof not paid when due shall bear interest from the date of delinquency until paid at a rate set by the Board of Directors of the Association, but not to exceed the maximum legal rate at the time of acceleration. The Board of Directors of the Association may suspend the voting rights of the Lot Owner and right to use the recreational facilities situated on the Common Property during the period in which any assessment or portion thereof remains unpaid and may bring an action at law against such Owner's Lot, in which event, late charges, interest, cost and attorneys fees in an amount equal to the greater of \$250.00 or fifteen (15%) percent of the past due amount plus interest due thereon, may be added to the amount of such assessment or portion thereof which is past due. All payments on account shall be applied first to late charges, then interest, then costs (which shall include any return check charge or charges), then attorneys fees, and then to the assessment lien first due. All late charges and interest collected shall be credited to the common expense fund. Each Lot Owner, by his acceptance of a deed or other conveyance to a Lot, vests in the Association the right and power to bring all actions against him personally for the collection of such charges as a debt and/or foreclosure the aforesaid lien against his Lot in the same manner as other liens for the improvement applied first to late charges, then interest, and then to the assessment of the lien first due. All late charges and interest collected shall be credited to the common expense fund. Each Lot Owner, by his acceptance of a deed or other conveyance to a Lot, vests in the Association the rights and power to bring all actions against him personally for the collection of such charges as a debt and/or foreclose the aforesaid lien against his Lot in the same manner as other liens for the improvement of

real property. The lien provided for in this Article Four shall be in favor of the Association and shall be for the benefit of all Lot Owners. Each Lot Owner hereby expressly grants to the Association a power of sale in connection with such lien, and each lot Owner hereby appoints the Association as such Owner's attorney-in-fact for the purpose of exercising such power of sale. The Association shall have the power to bid in the Lot at any judicial or foreclosure sale and to acquire, hold, lease, encumber and convey the same. No Lot Owner may waive or otherwise escaped liability for the assessments provided of herein by non-use of the Common Property and facilities located it thereon or abandonment of his Lot.

Section 2. Purpose of Assessment. The assessments provided for herein shall be used for the purpose of promoting the health safety, welfare, common benefit and enjoyment of the Owners and occupants of Lots in the Development and in particular for the acquisition, improvement, maintenance and operation of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Property, including but not limited to the payment of taxes and insurance thereon and repair, replacement, and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof, as well as for the establishment and maintenance of one or more reasonable reserve funds for such purposes as to cover unforeseen contingencies or deficiencies, or for emergency expenditures or such other matters as may be authorized from time to time by the Board of Directors. In determining the fiscal needs of the Association, the Board of Directors of the Association shall be authorized to establish from time to time a reasonable amount which shall be contributed as a part of the annual assessment for capital and/or depreciation purposes. As collected, such contributions shall be deposited in a special account held exclusively for such purpose with separate records maintained therefor and disbursements therefor shall be only for such purposes as determined from time to time by the Board of Directors.

Section 3. Maximum Annual Assessment. Immediately following the conveyance of the Home and Lot to an Owner from the Declarant; the maximum assessment shall be Four Hundred (\$400.00) Dollars per Lot, prorated to the owners at time of closing.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the Lot to an Owner, the maximum annual assessment may be increased above 5% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the 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, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided the any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast Sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment- Both annual and special assessments must be fixed at a uniform rate for all Lots, excluding lots owned by Original Declarant during the period when Original Declarant holds a Class B membership, and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, within the time provided by law and for a reasonable charge as permitted by law, 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 is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of Six (6%) Percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot. The bank return check fee charged to the Association for a Lot Owner's returned check may be charged to the Lot Owner by the Board; however, the Association will not impose any additional fees or penalties for a Lot Owner's first returned check. After the

return of a Lot Owner's check by the Association's banking institution, replacement funds by the Lot Owner must be in the form of a money order or cashier's check.

Section 9. Subordination of the Lien to Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first priority deed to secure debt, or any bona-fide second priority deed to secure debt in favor of a state or national charter bank, a state or national charter savings and loan association, or state or national charter credit union. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Address for Inquiry as to Status of Assessments. Inasmuch as the Class B membership has terminated, the address for inquiry as to the status of assessments shall be: CANAAN WALK HOMEOWNERS ASSOCIATION, INC., P.O. Box 4412, Atlanta, Georgia 30336. The Association shall be required to file this Declaration with the Clerk of the Superior Court of Fulton County, Georgia. The e-mail address for the Association shall be: canaanwalkhoa@yahoo.com.

ARTICLE V ARCHITECTURAL CONTROL

ARCHITECTURAL MAINTENANCE & USE RESTRICTIONS: The following architectural maintenance and use restrictions shall apply to each and every Lot now or hereafter subjected to this Declaration:

Section 1. Residential Purpose and Use. All Lots shall be used for and devoted to use as single family residences, and no business or business activity shall be conducted on any Lot or improvement located on any Lot at any time without the express written approval of the Declarant; notwithstanding the foregoing, this restriction shall not be construed to prohibit Original Declarant or Original Declarant's representative, designees, agents or employees from using any Lot owned or leased by Original Declarant for the sole purpose of carrying on business related to the development or construction thereon, or management of said development.

Section 2. Subdivision of Lots. No Lot shall be subdivided, nor shall the boundary lines of any Lot be altered, except with the prior written consent of Declarant and Original Declarant. Original Declarant expressly reserved the right to adjust boundary lines, building lines, easement areas and specifications of Lots owned by Original Declarant, and in concert with the owner of any contiguous Lot or Lots contiguous to contiguous Lots, to make such adjustments, in such event, Original Declarant shall record the plat of subdivision reflecting such adjustments, and each and every covenant contained herein shall apply to each Lot adjusted, as reflected on the re-recorded plat.

Section 3. Approval of Improvements. No improvement or structure, including by way of illustration and not by way of limitation, house, building wall, fence, pavement, driveway, sidewalk, parking area, swimming pool or tennis court shall be constructed, placed, erected, altered, added or added to, maintained or reconstructed on or about any Lot, unless and until the writing and granting as herein set out. The Architectural Control Committee ("Committee") may require any applicant to submit such plats, specification, certificates, surveys and other information (including by way of illustration but not by way of limitation, Surveyors Certificates, Architect's or Engineer's stamps or certifications or other professional certification) that the Architectural Control Committee shall at its, or their, sole discretion require. Each application shall describe in detail the specifications, materials, colors, construction and components of the improvement, and shall show the precise location of the improvement on the Lot, and shall include three sets of scaled site plans, landscape plans, floor plans, all exterior elevations, and samples of any materials requested by the Committee, as well as any other or further information that the Committee shall request. Each proposed improvement shall be constructed, placed, colored and shall otherwise be maintained and installed or erected exactly as approved by the Committee, and any improvement deviating from the conditions of approval shall be subject to the Remedies set out herein. Neither Declarant nor the Committee nor its members shall be liable or responsible in any way for any defects in any approved proposal or plan, or damages arising from or in any way connected to work done in conformity with or deviating from an approved plan; it shall be the sole and exclusive responsibility and liability of the person or entity submitting such plan or contracting for such work to assure that all applicable municipal county, state and federal codes and regulations are complied with, all necessary permits are obtained, and all work is performed in a safe manner and in conformity with sound engineering and architectural principles, and by submission of any proposal or plan to the Committee, the person or entity so submitting such proposal or plan agrees to indemnify, where applicable, the Original Declarant, the Committee, the Committee members and the Declarant and to hold each of them harmless from all loss, cost and damage arising from or associated in any manner with such work or improvements, whether associated in any manner with such work or improvements, whether proximate, consequential, incidental or otherwise in relation to the granting or denial of any such request, proposal or plan. The Committee may refuse to approve any such request, proposal or plan for any reason whatsoever, and neither the Committee as a whole nor any member shall be required to state a reason for such refusal.

Section 4. Governmental Regulation:

A. Regulation Conflicts

All governmental building codes, health regulation, zoning restrictions and the like applicable to the property now or hereafter made subject to this Declaration shall be observed. In the event of any conflict between any provision of any such governmental code, regulation or restriction and any provision of this Declaration, the more restrictive provision shall apply.

B. Retention Pond Maintenance

Each lot/home owner shall be (based on the total number of owned lots/homes) responsible for the pro rata maintenance of the retention pond and any expenses shall be paid/assessed based on the same pro rata apportionment of total expenses per individual lot.

Section 5. Building Setback and Lot Lines: All building setback lines, front, rear and side, shall be within 20% of setback set out on the plat of subdivision, as same is filed in the office of the Clerk of the Superior Court, as same may, from time to time be amended and replatted by Declarant, or by Benchmark. Declarant reserves to itself and confirms unto Benchmark the right to alter and amend any such setback or lot line on any lot owned by such party in Declarant's sole and absolute discretion, and on any lot owned by any Lot Owner, in concert with such Lot Owner.

Section 6. Approval of Plans: Each house, structure or improvement constructed by a person other than Declarant or a person constructing such house, structure or improvement on behalf of Declarant, or other than a house, structure or improvement constructed according to plans which shall have been given the express, written approval of Declarant, shall be constructed and maintained of materials and in colors approved by the Committee. Declarant's authority to approve such plans shall expire at such time as neither Benchmark nor Declarant shall own any Lot in the Subdivision, but such expiration shall not affect any approval previously given by Declarant.

Section 7. Completion of Improvements: Unless extended by Declarant or Benchmark, the exterior of all structures shall be completed within one year after commencement of construction. In cases of extreme hardship, the Committee may allow an extension of such time in its discretion.

Section 8. Utilities: No exterior pole, tower, antenna, disk or dish, nor any other device for the reception or transmission of television or radio signals, microwaves or any other form of radiation or energy shall be erected, placed or maintained on any Lot, other than where it will not be visible from the street; said antenna, disk or dish shall measure no more than 18 inches in its longest dimension. This sentence shall not apply to the installation of a community facility, erected on the Common Area, approved by Declarant or a majority of the Lot Owners.

Section 9. Exterior Lighting; Conditional Approval: Unless maintained as installed by Declarant no exterior lighting shall be added, altered, placed, maintained or installed, elevated or intensified on any Lot, except with the express written conditional approval of the Committee, which approval may specify the design, type, intensity, location, elevation, shielding and color of such lighting; notwithstanding the foregoing, the Committee shall have the option, even after granting of such approval and upon inspection of the effects of such lighting to further amend the lighting specifications, including by way of illustration and not by way of limitation, shielding, changes in color, direction, intensity, elevation and location, to preserve the comfort, privacy, and aesthetics of the surrounding Lots and property, and no lighting shall be maintained on

any part of property in such a manner as to constitute a nuisance or undue disruption to the quiet enjoyment of any other Lot in the subdivision.

Section 10. All clotheslines, woodpiles, garbage containers and the like shall be located or screened so as not to be visible from any vantage point on the street. No debris, trash, rubbish shall be allowed to accumulate on any Lot; all garbage and rubbish and refuse shall be regularly removed from each Lot.

Section 11. Except as situated by Original Declarant in the original construction of residences, unless expressly approved by the Committee, no mechanical equipment including heating and air conditioning unit, no fuel or water tanks or similar receptacles may be exposed to view; such devices and receptacles shall be shielded or screened, or installed within the main or accessory buildings or installed below finish grade, and shall be concealed from view by neighboring Lots and the streets.

Section 12. No mobile homes, house trailers, tents, shacks or barns or temporary structures of any kind shall be placed or maintained on any Lot except for shelters used by Original Declarant or building contractors during construction; in any event all such structures or devices shall be promptly removed after the completion of construction. Accessory buildings may be permitted if constructed of the same material as the main structure on the lot upon which same is built, and if expressly approved by Declarant or the Committee in writing, only if in connection with a home completely constructed upon the Lot upon which such accessory building is maintained, and only if constructed of the same material as the house on the lot in question; no motor homes, truck campers, trailer campers and boat trailers shall be parked, placed or maintained in any area where they are not screened or shielded from view by neighboring Lots and streets.

Section 13. Signs. No commercial signs or public advertising, including signs advertising the property upon which they are placed for sale or for rent shall be permitted to be maintained or erected on any Lot inside, or on the face of any home; unless specifically approved in writing by the Board (primary authority) or the Committee (alternative authority), in the sole discretion of Declarant or Committee as the case may be.

Notwithstanding the foregoing: any Owner taking title to any Lot by a deed in lieu of foreclosure of a first lien deed to secure debt or by foreclosure of a first lien deed to secure debt shall have the right to maintain a non-illuminated sign not larger than 18 inches by 24 inches per side, double-faced, advertising the Property for sale; Original Declarant shall have the right to maintain signs on common areas and improvements and on any Lot owned by Original Declarant advertising the subdivision, or any Lots for sale, as Original Declarant shall in Original Declarant's sole discretion deem appropriate; Original Declarant or the Association may maintain directional signs and signs identifying common areas or improvements.

Section 14. Mail Boxes; Address Markers. Except as may be installed by Original Declarant, no mail boxes, newspaper receptacles or address markers shall be erected or

maintained except as may be specifically approved in writing by Declarant or the Committee; Declarant or the Committee may specify the color, size, lettering style and size and all other specifications of such items.

Section 15. Animals. Only common household pets may be kept on any Lot, and shall be kept only in reasonable numbers and in such a manner as not to unduly disturb or interfere with the quiet enjoyment of the owners of other Lots and pedestrian traffic, and in conformity with all city, county and state ordinances with respect to such animals; no animal shall be permitted to roam free on any Lot, and shall at all times be confined indoors, in a pen or on a leash; all structures for the shelter of animals, all pens, and chained animals shall be screened from view from the streets; no animals may be kept or bred for commercial purposes. No Lot Owner shall keep more than two cats and two dogs in or about one residence.

Section 16. Nuisances. Each Lot Owner shall maintain his or her Lot in such a fashion as not to permit the development of any unsafe, malodorous, unsightly, unclean or unhealthy condition. Undue noise and disturbances shall not be permitted. In addition, no act or condition, which rises to the level of a common law nuisance shall be permitted; any violation of the city, county or state laws or ordinances occurring upon any Lot shall give rise to a cause of action under these Restrictions against any Lot Owner permitting or suffering such occurrence by such Owner's invitees, guests or family members.

Section 17. Maintenance. All Lots and the exterior of all improvements thereon shall be maintained in a safe, neat and attractive condition by their respective Owners. Such maintenance shall include, by way of illustration but not by way of limitation, regular painting of exterior surfaces, properly maintaining, repairing and replacing of gutters, roofs and paving materials, regular mowing of lawns and pruning of shrubbery and trees. Declarant or the Committee or the agents of either may (but shall not be required to so do), after 15 days' written notice to any Owner, during the daylight hours, enter upon such Owner's Lot for the purpose of mowing, clearing, removing, or pruning lawns, weeds, shrubs trees or bushes, or removing trash, noxious growths or weeds, or such other maintenance as Declarant shall, in Declarant's sole discretion deem necessary or proper, charging the costs of same to the Homeowners Association, or the Owner, as any other lien for the improvement of real property, or by other action at law or in equity. By acceptance of any Lot subject to these Restrictions, each Owner specifically permits such entry upon such Lot, agreeing and acknowledging that such entry is consensual and not a trespass, and covenants not to sue for such entry upon such Lot.

Section 18. Landscaping. No living tree having a trunk measuring over 5 inches in diameter at its widest point, and no living tree measuring over 5 feet in height shall be removed from any Lot without the express written permission of the Board of Directors²³ (primary authority) or the Committee (alternative authority) during such time as Declarant shall own any Lot in the Subdivision, and thereafter without such permission by the Committee. Any Lot Owner requesting such removal may be required to present, along with such Lot Owner's written request to remove any such tree, a landscaping plan showing all significant landscaping features in such detail as may be required by

Declarant or the Committee. Any Lot owner wishing to alter or replace landscaping details or elements initially installed or planted by Original Declarant shall first obtain the written permission of Declarant's Board of Directors (primary authority) or the Committee (alternative authority), following the same procedure as is prescribed for tree removal, above.

Section 19. Minimum House Size. No house containing less than the following heated and cooled square footage (exclusive of garages whether heated and cooled) shall be built on any Lot in the Development:

One-Story and Split Level Houses: minimum 2,200 heated and cooled square feet;
Two-Story Houses: minimum 2,400 heated and cooled square feet.

Section 20. Fencing. No chain link fence shall be constructed on any Lot. No fencing or gates shall be constructed in the front yards of any lot.

Section 21. Commercial Vehicles. No Commercial Vehicle of any kind shall be placed, parked or maintained on any Lot or Street of the Subdivision.

Section 22. Yard Sales. Yard Sales, in any form, are strictly prohibited on any Lot, Street or other area in the Subdivision.

Section 23. Exterior colors. All exterior colors must be approved by the Architectural Control Committee.

ARTICLE VI GENERAL PROVISIONS

General Provisions: The following General Provisions shall govern the construction of this Declaration:

Section 1. Duration. This Declaration shall run with the land subjected hereto and shall remain in effect and be enforceable by Declarant or the Committee or the Owner of any Lot subjected hereto, their successors, heirs, legal representatives and assigns respectively for a period of twenty years from the date this Declaration is filed for record in the Office of the Superior Court where the property subject to this Declaration is situated. This Declaration and the attendant rights of enforcement shall be automatically renewed for successive ten year periods thereafter, unless such the matter of renewal is submitted to a vote of the Association, and a minimum of sixty six percent of the Association membership casting votes in such election shall vote against renewal.

Section 2. Amendment. This declaration may be amended unilaterally at any time and from time to time by Declarant through its Board in order to comply with the provisions hereof with such any applicable federal state, county or municipal statute, ordinance, rule, regulation or judicial decision, or in order to enable a title insurer regularly doing business in the State of Georgia to issue title insurance policies upon any Lot, or in order

to comply with any requirement of the Federal Housing Administration, Veteran's Administration, F.N.M.A. OR F.H.L.M.C., B.N.M.A, or any other governmental, quasi-governmental, public or private guarantor, insurer or purchaser of residential loans, in order to allow for or to facilitate such guarantee, insurance or purchase, provided however that such amendment shall not adversely affect the title to any Lot.

This Declaration may also be amended by Declarant and the Association during the time in which Declarant shall own any Lot in the Subdivision, provided that a minimum of fifty-one percent of the membership of the Association voting in such election shall approve of such amendment, and thereafter by an affirmative vote of sixty-six percent of the membership voting in such election, provided however in any such event that such amendment shall not adversely affect the title to any Lot.

No amendment shall be effective until same has been recorded in the Office of the Superior Court of Fulton County, Georgia.

Section 3. Enforcement- Declarant, Original Declarant (only while Declarant owns a Lot in the Subdivision) or any Lot owner, or where the context hereof indicates, the Committee, shall have the joint and several right to enforce these Covenants through any available proceeding in equity or at law, in order to prevent or terminate any breach hereof, or to seek damages for such breach, or to seek any available remedy, including by way of illustration but not by way of limitation, injunction, specific performance, declaratory relief or any and all types of awards of damages.

In addition to such remedies, Declarant through its Board (primary authority) or the Committee (alternative authority), shall have the right, through its employees, agents or designees to enter upon any Lot where violation of any requirement of these Covenants exists, and correct, abate, or remove the cause of such violation, and neither Declarant through its Board nor the Committee, nor any employee, agent or designee of either shall be guilty of trespass or liable in any manner to any Lot owner or any other person or entity by reason of such action; all of the reasonable costs incurred in such correction, abatement or removal including without limitation court costs and attorneys' fees incurred by Declarant through its Board, or the Committee for legal representation in defense of or in vindication or declaration of the legality or legitimacy of such action shall be paid by the Lot owner owning the Lot upon which the violation occurred, originated or is maintained, and such costs shall be and remain a charge upon such Lot, enforceable by Declarant through its Board, or the Committee, in the same manner as other liens upon real property for the improvement thereof.

Section 4. Notification as to violation. Notwithstanding the provisions of Section 3, foregoing, no such action shall be taken until thirty days after the Board, or the Committee, as the case may be, shall have sent by certified mail addressed to the owner of the Lot upon which such condition exists, at such address as has been provided by such Lot owner, or if no address has been provided, then to the address of the Lot where such condition exists, or in the alternative shall have personally delivered a written notification, that the Lot in question is being maintained in violation of this Declaration

and that the owner must correct the violation in question within thirty days following such mailing or delivery.

Section 5. Inadequate Remedy at Law. This Declaration is intended to protect and preserve the quality of life of all residents in the Development, and to insure the continuity of high standards of property maintenance for the benefit of all such resident; it is therefore declared that a violation of the provisions of this Declaration can not be adequately compensated by the recovery of damages, and that irreparable injury would result from allowing a threatened breach to mature, and that therefore either Declarant, or the Committee, or any Lot Owner shall be entitled, in addition to the other remedies herein specified, to enforce the provisions of this Declaration by injunctive relief to restrain or abate any violation or threatened violation.

Section 6. Delay or failure to Enforce Not a Waiver. No failure or delay in enforcement of the provisions of this Declaration by Declarant or the Committee or any Lot owner shall be deemed or construed to be a waiver of the right of enforcement, acquiescence in such violation, or a waiver or acquiescence as to a future violation. No right of action shall accrue nor shall any action be brought or maintained by any person or entity against Declarant or the Committee or its members due to any failure to bring or take any action pursuant to the provisions hereof related to enforcement of this Declaration, nor to compel Declarant or the Committee to bring or take such action, and by acceptance of a Lot subjected hereto, each and every Lot owner agrees and covenants not to sue Declarant or the Committee or its members for such failure to take or bring such action, or to compel any of them to take or bring such action.

Section 7. Assignment and Delegation of Declarant's Authority. Declarant shall at all times and from time to time have the right to delegate any and all rights, powers, Privileges, immunities and functions herein reserved to Declarant to one or more committees, including by way of illustration but not by way of limitation, the Committee. Declarant shall at all times and from time to time have the right to fully transfer, convey and assign all rights, powers, privileges, immunities and functions herein reserved to Declarant to the Association.

Section 8. Scope of this Declaration. The provisions of this Declaration shall inure only to the exclusive benefit of the Declarant, the Committee and the owners of Lots subjected thereto, as well as to their respective heirs, assigns, successors and legal representatives, and to holders of Deeds to Secure Debt encumbering Lots; no other person or entity shall have the right to enforce the provisions hereof, nor to in any way assert or rely upon the benefits or rights conferred hereby.

Section 9. Miscellaneous. The terms and provisions of this Declaration are severable; each term and provision hereof shall be interpreted in such a manner as to give effect and validity to each and every other terms, but in the event that any term or provision hereof shall be found to be unlawful as applied to any particular person or property, then such finding of unlawfulness shall not affect the validity of such term or provision or any other

term hereof shall be found to be unlawful upon its face, then such finding of unlawfulness shall not affect the validity of any other term or provision hereof.

The terms and provisions hereof shall be liberally interpreted and construed in such a fashion as to best effect the plan of development expressed herein. In the event that Declarant deems it necessary or desirable in the interests of effecting such plan of development, Declarant may enlarge or extend the terms and provisions hereof by implication.

The captions and catch lines of this Declaration are provided for the convenience of the reader, and are not to be construed as limiting, modifying, extending or otherwise affecting the content hereof.

ARTICLE VII ADMINISTRATION

Section 1. Responsibility for Administration. The maintenance, repair, replacement and operation of the Common Property and facilities located thereon shall be the responsibility of the Association. Such administration shall be governed by this Declaration and the Articles of Incorporation and By-Laws of the Association as shall be set forth in said documents, together with those reasonably implied to effect their respective purposes, and shall be exercised in the manner provided therein.

Section 2. Management Agreements. The Association's Board of Directors may enter into such management agreements as it may deem necessary or advisable for the administration and operation of the property subject to the Association's jurisdiction. Provided, however, any management agreement shall be terminable by the Board of Directors for cause upon thirty (30) days written notice thereof and the term of any such agreement may not exceed one year, renewable by agreement of the parties for successive one-year periods. All costs and expenses are payable from the common expense fund. Any such management agreement may provide that, during its tenure, the person(s) with whom or entity with which the Association contracts for such administration and operation (hereinafter sometimes referred to as the "manager") shall be authorized and responsible for exercising all powers and performing all duties of the Association, excepting only those powers and duties specifically and exclusively assigned or reserved to the officers, directors or members of the Association by this Declaration and the Association's Articles of Incorporation or By-Laws. The Board of Directors may require that such manager be bonded. Each Lot Owner hereby agrees to be bound by the terms and conditions of all management agreements entered into as hereinabove provided. Further, each Lot Owner hereby agrees that the Association may execute or carry out the management functions and responsibilities of the Association without a professional manager and without the prior express written approval of the holders of all first mortgages encumbering any of the Lots now or hereafter located within the Development.

Section 3. Limitations of Liability, Indemnification. Notwithstanding the duty of the Association to maintain, repair and replace the Common Property and common facilities, the Association shall not be liable for injury or damage caused by any latent condition of such property and facilities nor for injury or damage caused by the elements, its members or other persons, nor shall any officer, or director of the Association be liable to any of its members for injury or damage caused by such officer or director in the performance of his duties unless due to the willful malfeasance or misfeasance of such officer or director. Each officer or director of the Association shall be indemnified by the Association against all expenses and liabilities, including attorney's fee, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which may become involved, by reason of his being or having been such an officer or director, whether or not he is such an officer or director at the time such expenses and liabilities are incurred, except in such cases wherein the officer or director is adjudged guilty of willful misfeasance or malfeasance or malfeasance in the performance of his duties. Provided, however, in the event of a settlement, the indemnification shall apply only when the Board of Directors approves each settlement and reimbursement as being in the best interest of the Association.

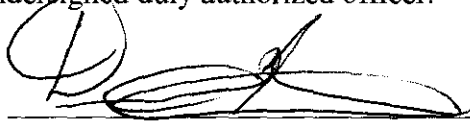
ARTICLE VIII

The provisions of this Declaration may be continued for successive periods of twenty years by virtue of each of the owners of record of 2/3 or more of the Lots in the Subdivision executing an instrument containing a description of the Subdivision, together with a list of the names of all of the record owners of the Lots in the Subdivision, together with a description of each covenant which is to be continued, together with an affidavit of an attorney licensed to practice in the State of Georgia stating that such attorney has searched the land records of the county in which the Subdivision is located and has verified the correctness of the names appearing in the document; all of the foregoing documents shall be recorded in the office of the Clerk of the Superior Court of the County in which the Subdivision is located prior to the expiration of the term or extension which is itself to be extended. Said instrument shall be indexed under the name of the record owner of each Lot in the Subdivision.


IN WITNESS WHEREOF, the Declarant herein, as caused this Declaration to be executed, sealed and delivered by the undersigned duly authorized officer.



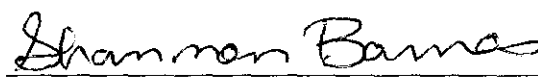
Witness



Dexter Hall
President, Canaan Walk HOA, Inc.



Notary Public



Shannon Barnes
Treasurer, Canaan Walk HOA, Inc.



Notary Public, Coweta County, Georgia
My Commission Expires Aug. 14, 2008

EXHIBIT "A"

ALL THAT TRACT and parcel of land lying and being in Land Lot 120 and 129 of the 14-FF District of Fulton County, Georgia, and being all of Canaan Walk Subdivision as shown by plat of said subdivision recorded in the real property records of Fulton County, Georgia, in Plat Book 213, Page 13; said plat being made a part hereof by this reference thereto for a more complete description of the metes and bounds, courses and distances of said property.