

STATE OF GEORGIA  
COUNTY OF BARROW

DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
INDIAN MEADOWS HOMEOWNERS' ASSOCIATION

THIS DECLARATION, made on the date hereinafter set forth by CASTA  
DEVELOPMENT, INC. a Georgia Corporation, (hereinafter referred to as "Declarant")

WITNESSETH:

WHEREAS, Declarant is the owner of two tracts of real property described as follows:

- (1) All that tract or parcel of land lying and being in the 1740<sup>th</sup> District, G.M., State of Georgia, Barrow County, encompassing 33.24 acres and designated as Tract No. 3 according to a plat of survey prepared by W.T. Dunahoo and Associates, Inc., certified by W.T. Dunahoo, Georgia Registered Surveyor No. 1577, dated August 4, 1973, entitled "Survey for George W. Giles Estate", said plat being of record in the Office of the Clerk of Superior Court for Barrow County, Georgia in Plat Book 6, page 466; which said plat and the recording thereof are by reference hereto incorporated herein for a more complete and detailed description

LESS AND EXCEPT: All that tract or parcel of land lying and being in the 1740<sup>th</sup> District, G.M. of Barrow County, Georgia, as described by survey for Virginia Montgomery, dated February 8, 1989, prepared by W.T. Dunahoo and Associates, Inc. as follows:

Beginning at a point at the intersection formed by the northwesterly right of way of County Line-Auburn Road and the Southeasterly right of way of Parks Mill Road 954.40 feet northwesterly as measured along the southeasterly right of way of Parks Road to an iron pin found; thence North 54 degrees 14 minutes 59 seconds East, a distance of 716.7 feet to an iron pin set; thence North 30 degrees 34 minutes 41 seconds west, a distance of 280.99 feet to an iron pin set; thence South 60 degrees 00 minutes 00 seconds West, a distance of 670.00 feet to an iron pin set; thence South 25 degrees 22 minutes 55 seconds East, a distance of 101.545 feet to a point; continuing South 23 degrees 48 minutes 26 seconds East, a distance of 99.50 feet to a point; continuing South 22 degrees 05 minutes 07 East, a distance of 154.11 feet, to an iron pin found and the point of beginning.

- (2) All that tract or parcel of land lying and being in the 1740<sup>th</sup> District, G.M.

State of Georgia, County of Barrow, encompassing 33.24 acres and designated as Tract No. 4 according to a plat of survey prepared by W. I. Dunahoo and Associates, Inc., certified by W. I. Dunahoo, Georgia Registered Surveyor No. 1577, dated August 4, 1973, entitled "Survey for George W. Giles Estate", said plat being of record in the Office of the Clerk of Superior Court for Barrow County, Georgia in Plat Book 6, page 466; which said plat and the recording thereof are by reference hereto incorporated herein for a more complete and detailed description

WHEREAS, Declarant intends to develop on lands, including the real property described above, a development to be known as **Indian Meadows Subdivision** (hereinafter sometimes referred to as the "Development"); and

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

NOW, THEREFORE, Declarant hereby declares that all of the properties referenced 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 owner thereof.

## **ARTICLE I DEFINITIONS**

Section 1. Association. "Association" means Indian Meadows Homeowners' Association, Inc. (a domestic non-profit corporation organized under the Georgia Nonprofit Corporation Code), its successors and assigns.

Section 2. Board. "Board" means the Board of Directors of the Association.

Section 3. By-Laws. "By-Laws" means the By-Laws of the Association.

Section 4. Common Property. "Common Property" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners. It is contemplated that Declarant may convey certain portions of additional property to the Association as "green space" for recreation areas without improvements thereto and the Association shall accept such areas as Common Property. Additionally, for the benefit of the Owners, the Declarant will erect signage at the entrance to the Development, and will provide plantings around the signage. Such signage and plantings shall maintained by the Association to the extent that maintenance by the Association is consented to by the record title owner of the property on which said signage and plantings are located.

Section 5. Declarant. "Declarant" shall mean and refer to Casta Development, Inc., its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development, and if Casta Development, Inc., transfers to such successors or assigns its rights as Declarant by written instrument. Any successor or assign that has become Declarant as provided for herein may also transfer Declarant's rights as set forth herein.

Section 6. Lot. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 7. Member "Member" means any member of the Association.

Section 8. Owner. "Owner" 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, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 9. Property or Properties. "Property or Properties" shall mean and refer to that certain real property hereinabove described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 10. Restrictions. "Restrictions" means all covenants, restrictions, easements, charges, liens and other obligations created or imposed by this Declaration.

Section 11. Structure. "Structure" means:

- (a) anything or object the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration and not limitation, any building or part thereof, garage, porch, shed, greenhouse or bathhouse, coop or cage, covered or uncovered patio, swimming pool, fence, curbing, paving, wall, tree, shrub, sign, signboard, temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such Lot;
- (b) any excavation, grading, fill ditch, diversion dam or other thing, or device which

affects or alters the natural flow of surface waters from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial creek, stream, wash or drainage channel from, upon or across any Lot; and (c) any change in grade at any point on a Lot of more than six (6) inches, whether or not subsection (b) of this Section 12 applies to such change.

## ARTICLE II

### PROPERTY RIGHTS

Section 1. Owners' 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 charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area, together with the right of the Declarant, for so long as Declarant is a Class B member to authorize reasonable use of the Common Area for outside groups and thereafter for the Association to do likewise;
- (b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by 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;
- (c) the right of the Association 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 the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded.

Section 2. Declaration 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.

## 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. The Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one (1) 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 Declarant and Declarant shall be entitled to three (3) votes for each Lot owned by Declarant or by a builder who holds a Lot for resale. A builder who holds Lots for resale shall not have voting rights, as Declarant shall control such votes. The Class B membership shall cease and be converted to Class A membership when Seventy – Five Percent (75%) of Lots have been conveyed to Owners.

Section 3. The first Owner to take possession of a Lot following the conveyance of Seventy-Five Percent (75%) of Lots to Owners shall assume control of the Association and shall be responsible for collection of assessments and payment of taxes on the Common Area. Should the first Owner decline to assume control of the Association, control shall pass to the second Owner to take possession of a Lot following the conveyance of Seventy-Five Percent (75%) of Lots to Owners, and so on until an Owner has assumed control of the Association.

Section 4. Whomever, as between the Declarant or builders holding Lots for resale, owns a majority of Lots in the Development on January 1, 2006, shall be responsible for the collection of assessments and the payment of taxes on the Common Area until Seventy-Five Percent (75%) of Lots in the Development have been conveyed to Owners.

## ARTICLE IV

### COVENANT FOR PAYMENT OF TAXES ON COMMON AREA

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments, taxes or charges for the common area, such assessments to be established and collected as hereinafter provided. The annual assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and

shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, 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 delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of the Properties and for the improvement and maintenance of the Common Area.

Section 3. Annual Assessments. Beginning January 1, 2006, the annual assessment shall be Sixty Dollars (\$60.00) per lot.

- (a) From and after January 1<sup>st</sup>, 2006, the maximum annual assessment may be increased each year not more than Five Percent (5%) above the maximum assessment for the previous year without a vote of the membership.
- (b) From and after January 1<sup>st</sup>, 2006 the maximum annual assessment may be increased above five percent (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.
- (d) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Notice and Quorum for Any 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 thirty (30) days nor more than sixty (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 sixty (60) days following the preceding meeting.

Section 5. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis or annually as determined by the Board.

Section 6. Date of Commencement of Annual Assessments: Due Dates. The annual assessments and initial membership fee provided for herein shall commence as to all Lots on January 1, 2006. 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. Anything contained herein to the contrary notwithstanding, Declarant and any owner of a Lot held solely for resale by a person building a residence thereon, on behalf of themselves and their successors and assigns, covenant and agree to pay the annual assessment for each lot owned by Declarant and said builder which contains an occupied residence; provided, however, Declarant and such builder shall not be responsible for assessments on Lots not containing an occupied residence for so long as Declarant or such builder funds any deficiency which may

exist between assessments and the annual expenses of the Association. At the time Declarant fails to fund any deficiency which exists between the annual assessments and the expenses, all Lots shall be fully subject to the annual assessment. Failure of Declarant to meet its obligation to fund budget deficits or to pay assessments, if required, shall constitute a lien against the land Declarant owns in the aforementioned subdivision. Declarant's obligation to fund such deficit shall be cumulative of all years in which there is a Class B member, however, such that Declarant shall have the right to make advances to fund such deficit or make loans to the Association to fund such deficit and Declarant shall have the right to be repaid from dues or assessments received by the Association as funds become available in later years. Every Owner, by acceptance of a deed to a Lot, acknowledges that Declarant's obligation to fund deficits is conditioned upon Declarant's right to recoup such funds at such time as the assessments received exceed the actual operating expenses of the Association. 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, upon demand, 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 is binding upon the Association as of the date of its issuance.

Section 7. 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 Twelve Percent (12%) 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.

Section 8. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. 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 lien thereof; shall extinguish the lien of such assessments as to payments which became due prior 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.

## ARTICLE V

### GENERAL COVENANTS AND RESTRICTIONS

The following covenants and restrictions shall apply to all Lots and to all Structures erected or placed thereon:

1. Lots shown shall be for single family dwellings with no lot or structure being used for any type of business or commercial enterprise. No building shall be erected on any lot to be used as a school, church or kindergarten.

2. No lot shall be subdivided such as to create an additional building lot.
3. No temporary house, shack, tent or trailer shall be erected on any lot.
4. No residence shall be erected on any lot to have less than 1500 square feet of indoor heated area. No mobile homes, doublewide homes or manufactured homes shall be allowed. All homes shall be stick built and constructed on site.
5. No relocated house shall be moved onto the property.
6. A minimum of two trees shall be planted or preserved on each Lot.
7. Sidewalks shall be installed throughout the Development per the requirements of the City of Auburn.
8. No accumulation of discarded personal effects, debris, waste, garbage or other unsightly objects or matter will be permitted on any lot. All garbage cans shall be concealed from view of the street and neighboring properties except on specific days of scheduled pickup. All woodpiles shall be concealed from view of the street and neighboring properties.
9. Lot owners must acquire written approval from the developer, or the homeowners association once established, of all house plans, site location, additions, outbuildings (including any pet shelter), exterior finish, exterior color and roof material and color prior to commencement of construction or modification.
10. No animals, livestock or poultry of any kind may be raised, bred, kept or permitted on any lot, with the exception of dogs, cats or other usual and common household pets in reasonable number. No pets shall be kept, bred or maintained for any commercial purpose.
11. Antennas and small satellite dishes behind rear of homes are permitted. Any other kind must have written consent of the developer or the homeowners association.
12. No sign of any kind shall be erected on any lot except for reasonable and appropriate "For Sale" or "For Rent" signs relating to the lot. No business sign can be erected on property. Entry signs and fences, subdivision identification signs, and sale information signs erected by the developer or his agents are hereby excepted.
13. The term "vehicles" as used herein shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, four wheelers, go-carts, trucks, campers, buses, vans and automobiles. Vehicles shall not be parked on the street. No tractor-trailer may be parked anywhere in the subdivision with the exception of use during construction.
14. All residences must have a concrete driveway.



15. No window air-conditioning units may be installed that are visible to the street or of neighboring property.
16. No exterior clotheslines shall be permitted on any lot.
17. Homebuilder shall be responsible for implementation of and conformance with county/state soil erosion control ordinance.
18. Homebuilder shall be required to maintain cleanliness of building site, removing all debris and construction materials after completion of construction. He shall be required to remove transported soils from street gutters and catch basins abutting developed lot. He shall seed all disturbed earth with a permanent vegetative cover.
19. All structures erected shall be completed within 180 days of when work began.
20. Owners shall not alter, remove or add improvements to any entry features constructed by the developer on any lot, or any easement associated therewith without the prior written consent of the developer.
21. Any additional structures such as garages, workshops, storage buildings, animal shelters, etc., must conform to the same design, colors and building materials as the house, and must be approved by the developer or homeowners association in writing and be in harmony with the subdivision and shall not create a sight detrimental to the beauty of the subdivision.
22. Approved Builders. The approved builders will be selected and monitored by the developer and a representative of the marketing company currently handling the properties.
23. All builders shall supply homeowner with uniform mailbox chosen by developer.
24. Any vehicles of additional structures such as RV's, above ground pools, etc. should be enclosed behind wood privacy fencing.
25. All lots shall have sidewalks to be installed by the Builder not later than at the time of completion of the house.
26. These covenants shall remain in force for a period of twenty (20) years from the date these covenants are recorded.
27. Enforcements shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenants.
28. Invalidation of any 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 VII

### EASEMENTS, ZONING AND OTHER RESTRICTIONS

#### Section 1. Easements.

- (a) Declarant hereby expressly reserves to the Declarant, its successors and assigns forever, the right to create perpetual easements in, on, over and under any part of the Property owned by Declarant for any purpose which Declarant deems necessary, including, by way of example, and not limitation, the following: (i) the erection, installation, construction and maintenance of wires, lines, conduits and poles and the necessary or proper attachments in connection with the transmission of electricity, telephone, cable television and other utilities and similar facilities; (ii) the erection, installation, construction and maintenance of storm water drains, land drains, public and private sewers,, irrigation systems, pipelines for supplying gas, water and heat, and for any other public or quasi public facility, service or function; (iii) slope control purposes, including the right to grade and plant slopes and to prevent the doing of any activity which might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow; (iv) the planting or replanting of hedges, shrubbery, bushes, trees, flowers and plants of any nature; (v) the erection, installation, construction, and maintenance of fences, walls, monuments, signs, etc along streets in, around and along and at entrances to the Development, and the right to landscape such areas, plant, re-plant and prune hedges, shrubbery, bushes, trees, flowers, grass and plants of any nature.
- (b) No Owner shall have any right to use any easement created by the Declarant in, on or over any portion of the Property, unless such easement has been assigned by the Declarant to the Association.
- (c) The Declarant hereby reserves for itself; its successors and assigns, across the initial phase of the Property perpetual easements appurtenant to and for the following uses and purposes:
- (i) An easement for ingress and egress by vehicular and pedestrian traffic over such drives, roadways, walkways and paths as are shown on the plat or plats recorded in connection with the initial phase of the Property, and such drives, roadways, walkways and paths as may be constructed in the future; and
  - (ii) An easement for the purpose of installing, operating, maintaining and replacing wires, pipes, conduits and other structures and facilities necessary to the furnishing of gas, water, sewerage, storm drainage, electricity, streetlights, telephone, and other utilities and services, including the right to use in common with the owners

in the initial phase of the Property, the wires, pipes, conduits, and other structures and facilities furnishing such utilities and services to such Owners

- (d) In addition to the above, the Declarant hereby grants a general easement in favor of utility, cable television and other such service companies across the Property to maintain, repair, replace and service wires, pipes, conduits, streetlights and other structures and facilities provided for the benefit of the Owners.
- (e) The easements created in this Article VII are in addition to any easements or rights created elsewhere in this Declaration or in other easements of record. The provisions of this Article VII may not be amended without the written consent of the Declarant, its successors and assigns.

Section 2. Easement Area The words "Easement Area" as used herein shall mean those areas on any Lot with respect to which easements are shown on a recorded deed or on any filed or recorded map or plat relating thereto.

Section 3. Entry The Declarant and its employees, agents, successors and assigns shall have the right at all reasonable times to enter upon all parts of each Easement Area for any of the purposes for which such Easement Area is reserved without being deemed to have committed a trespass or wrongful act solely by reason of such entry and the carrying out of such purposes, provided the same are done in accordance with the provisions of this Article

The Declarant and its employees, agents, successors and assigns shall be responsible for leaving each Lot in good condition and repair following any work or activity undertaken in an Easement Area pursuant to the provisions of Section 1.

Section 4. Zoning and Private Restrictions None of the covenants, restrictions or easements created or imposed by this Declaration shall be construed as permitting any action prohibited by applicable zoning laws, or by the laws, rules or regulations of any governmental body. In the event of any conflict between such laws, rules or regulations and the covenants, restrictions and easements created or imposed by this Declaration, the most restrictive provision shall govern and control

## ARTICLE VII

### ENFORCEMENT

Section 1. Right of Enforcement. This Declaration and the Restrictions contained herein shall inure to the benefit of and shall be enforceable by (i) the Declarant so long as an Owner, (ii) the Association and (iii) each owner, his legal representatives, heirs, successors and assigns.

Section 2. Right of Abatement.

- (a) Except where different notice provisions are provided in Article V, Section 11 and Article VI, Section 14, in the event of a violation or breach of any Restriction contained in this Declaration, the Association shall give written notice by certified mail to the Owner setting forth in reasonable detail the nature of such violation or breach, and the specific action or actions needed to be taken to remedy such violation or breach. If the Owner shall fail to take reasonable steps to remedy such violation or breach within thirty (30) days after the mailing of such written notice, then the Association shall have the Right of Abatement.
- (b) The Right of Abatement, as used in this Section and Article V, Section 11 and Article VI, Section 14 hereof, means the right of the Association, through its agents and employees, to enter at all reasonable times upon any Lot or Structure, as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove or repair such violation, breach or other condition which may exist thereon contrary to the provisions hereof, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and such actions, provided such entry and such actions are carried out in accordance with the provisions of this Section, and with the cost thereof, including the costs of collection and reasonable attorney's fees, together with interest thereon at the lower of the highest rate permitted by law or 12% to be a binding personal obligation of such Owner enforceable in law, as well as a lien on such Owner's Lot enforceable pursuant to the provisions of Section 4 hereof. Such lien shall be superior to any and all charges, liens or encumbrances which may in any manner arise or be imposed upon the Lot after such entry whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, excepting only (i) such liens for taxes or other public charges as are by applicable law made superior, (ii) the liens created by Section 4.01 hereof and (iii) all deeds to secure debt given to secure a loan the proceeds of which are used (1) to purchase a Lot or Lots (together with any and all Structures which may from time to time be placed or located thereon) and (2) to finance the construction, repair or alteration of Structures.

Section 3. Specific Performance. Nothing contained in this Declaration shall be deemed to affect or limit the rights of the Declarant, the Association or any Owner to enforce the Restrictions by appropriate judicial proceedings or to recover damages. However, it is hereby declared that it may be impossible to measure accurately in money the damages which will accrue to a

beneficiary hereof, its transferees, successors or assigns, by reason of a violation of, or failure to perform any of the obligations provided by, this Declaration; and, therefore, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof

If any action at law or in equity is brought to enforce any of the covenants set forth herein, the party against whom the action is brought shall be responsible for the reasonable attorney's fees of the party bringing the action should the party prevail.

Section 4. Collection of Assessments and Enforcement of Lien.

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

(b) As an additional remedy, but in no way as a limitation on the remedies, if any assessment, interest, cost or other charge is not paid as required by this Declaration, each Owner hereby grants to the Association and its assigns the following irrevocable power of attorney to sell the said Lot or Lots subject to the lien at auction, at the usual place for conducting sales at the Courthouse in Barrow County, Georgia, to the highest bidder for cash, after advertising the time, terms and place of such sale once a week for four weeks immediately preceding such sale (but without regard to the number of days) in the paper in which the Sheriff's advertisements for Barrow County, Georgia are published, all other notice being hereby waived by each Owner, and the Association or any person on behalf of the Association, or assigns, may bid and purchase at such sale and thereupon execute and deliver to the purchaser or purchasers at such sale a conveyance of said property in fee simple, which conveyance shall contain recitals as to the happenings of the default upon which the execution of the power of sale herein granted depends, and each owner hereby constitutes and appoints the Association and assigns, the agent and attorney in fact of each owner to make such recitals, and hereby covenants and agrees that the recitals so to be made by the Association, or assigns, shall be binding and conclusive upon the Owner whose property is the subject matter of such sale, and the heirs, executors, administrators and assigns of such Owner, and that the conveyance to be made by the Association or assigns, shall be effectual to bar all equity of redemption of such Owner, or the successors in interest of such Owner, in and to said Lot or Lots, and the Association or assigns shall collect the proceeds of such sale, and after reserving therefrom the entire amount of assessment, Interest, cost or other charge due, together with all costs and expenses of sale and fifteen percent of the aggregate amount due for attorney's fees, shall pay any excess to such Owner, or to the heirs or assigns of such owner as provided by law. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise and are granted as cumulative to the remedies for collection of said indebtedness provided by law

(c) **Waiver.** Each owner, by acceptance of a deed conveying a lot subject to this section, waives any right which Owner may have under the Constitution or the laws of the State of Georgia or the Constitution or laws of the United States of America to notice or to a judicial hearing prior to the exercise of any right or remedy provided by this section, and owner waives Owner's rights, if any, to set aside or invalidate any sale duly consummated in accordance with the provisions of this declaration on the ground (if such be the case) that the sale was consummated without a prior judicial hearing. All waivers by Owner in this paragraph have been made voluntarily, intelligently and knowingly, after Owner has first been allowed the opportunity to consult legal counsel with respect to Owner's possible rights.

Section 5. No Waiver. The failure of the Declarant, the Association, or the Owner of any Lot, his or its respective legal representatives, heirs, successors and assigns, to enforce any restrictions herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to any violation or breach occurring prior or subsequent thereto.

## ARTICLE IX

### DURATION AND AMENDMENT

#### Section 1. Duration and Perpetuities.

(a) The provisions of these covenants shall run with and bind the land and shall be and remain in effect perpetually to the extent permitted by law. Provided, however, so long as Georgia law limits to twenty (20) years, the period during which covenants restricting lands to certain uses may run, any provisions of these Covenants affected thereby shall run with and bind the land for a period of twenty (20) years from the date these Covenants are filed for record in the Office of the Clerk of the Superior Court of Barrow County, Georgia, after which time such provisions shall be automatically extended, if permitted by law, for successive periods often (10) years, unless an Instrument, signed by at least Seventy-Five Percent (75%) of the then Owners of record and the holders of first mortgages on their Lots has been recorded In the Office of the Clerk of said Court, agreeing to terminate or change such provisions in whole or in part. Every purchaser or grantee of any interest in any portion of the Property, by acceptance of a deed or other conveyance thereof; thereby agrees that the provisions of these Covenants may be extended and renewed as provided in this section

(b) If any of the covenants, conditions, restrictions, easements or other provisions of these Covenants shall be unlawful, void or voidable for violation of the Rule Against Perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the survivor of the now living descendants of Her Majesty Queen Elizabeth II, the Queen of England.

Section 2. Amendment. These Covenants may be amended unilaterally at any time and from time to time by Declarant (i) if such amendment is necessary to bring any provision hereof into

compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to these Covenants, (iii) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots subject to these Covenants, or (iv) if such amendment is necessary to enable any governmental agency, such as the Federal Housing Administration, the Veterans Administration, or reputable private insurance company to insure mortgage loans on the Lots subject to these Covenants; provided any such amendment shall not adversely affect the title to any Owner's Lot, unless any such Owner so affected thereby shall consent thereto in writing. These Covenants may be amended at any time and from time to time by an agreement signed by at least seventy five (75%) percent of the Owners; provided, however, such amendment by the Owners shall not be effective unless also signed by the Declarant, if Declarant is the owner of any real property subject to these Covenants; and provided further, however, no amendment affecting the Declarant's right to add additional property shall be effective unless also signed by the Declarant. No amendment to the provisions of these Covenants shall alter, modify, change or rescind any right, title, interest or privilege herein granted or accorded to the holder of any mortgage encumbering any Lot or the Common Area affected thereby unless such holder shall consent in writing thereto. Any such amendment shall not become effective until the instrument evidencing such change has been filed of record in the Office of the Clerk of the Superior Court of Barrow County, Georgia. The written consent thereto of any mortgage holder affected thereby shall also be filed with such amendment. Every purchaser or grantee of any interest in any real property now or hereafter subject to these Covenants, by acceptance of a deed or other conveyance therefrom thereby agrees that these Covenants may be amended as provided in this Section.

## ARTICLE X

### MISCELLANEOUS

Section 1. Other Changes. Notwithstanding any other provisions hereby which may be construed to the contrary, unless at least two-thirds (2/3) of the first mortgagees (based upon one vote for each first mortgage owned) or Owners (other than the Declarant) of the individual Lots in the Development have given their prior written approval, the Association shall not be entitled to:

- (a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Property owned, directly or indirectly, by such Association (the granting of easements for public utilities or for shall not be deemed a transfer within the meaning of this clause);
- (c) change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;
- (d) by act or omission change, waive or abandon, any scheme of regulations, or enforcement thereof; pertaining to the architectural design or the exterior appearance of dwellings on

- the Lots of the Development, the exterior maintenance of Lots and improvements thereon, the maintenance of the Common Property or party walks or common fences or common roadways and driveways, or the upkeep of lawns and plantings in the Development;
- (e) fail to maintain fire and extended coverage on insurable Association Common Property if any, on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost);
  - (e) use hazard insurance proceeds for losses to any Association Common Property for other than the repair, replacement or reconstruction of such property.

a) First mortgagees of Lots in the Development may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Association's Common Property and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy, for such Common Property and first mortgagees making such payments shall be owed immediate reimbursement therefore from the Association. Despite any other provision of this Declaration which may be interpreted otherwise, it is expressly intended that no Owner or any other party have priority over any rights of the first mortgagee of a Lot pursuant to its mortgage or security deed in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Association Common Property.

b) In addition to the rights of mortgagees elsewhere provided, each first mortgagee of a Lot, upon request, shall (i) be entitled to written notice from the Association of any default in the performance of his obligations under the Development documents of an Owner which is not cured within sixty (60) days; (ii) be entitled to attend and observe all meetings of Owners, but not meetings of the Board; (iii) be entitled to be furnished copies of annual financial reports made to the Owners; and be entitled to inspect the financial books and records of the Association during reasonable business hours.

Section 3. No Reverter. No restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

Section 4. Severability. A determination by a court that any provision hereof is invalid for any reason shall not affect the validity of any other provision hereof.

Section 5. Headings. The headings of the Articles and Sections hereof are for convenience only and shall not affect the meaning or interpretation of the contents of this Declaration.

Section 6. Gender. Throughout this Declaration, the masculine gender shall be deemed to include the feminine and neuter, and the singular, the plural, and vice versa.

Section 7. Notices. All amendments, notices, requests, objections, waivers, rejections, agreements, approvals, disclosures or consents of any kind made pursuant to this Declaration, whether made by the Declarant, the Association, the ACC, the Owner, or any other person, shall



be in writing. All such writings shall be sufficient only if deposited in the United States Mail, with sufficient postage, and sent to the following addresses:

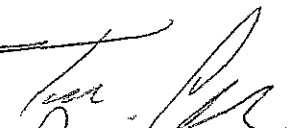
(a) Declarant: CASTA DEVELOPMENT, INC.

(b) Owners: Each Owner's address as registered with the Association in accordance with the By-Laws. Any written communication transmitted in accordance with this Section 7 shall be deemed received on the third (3rd) day following the day such written notice is deposited in the United States Mail.

Section 8. No Liability Declarant has, using best efforts and all due diligence, prepared and recorded this Declaration so that each and every owner shall have the right and the power to enforce the terms and provisions of this Declaration against every other Owner. However, in the event that this Declaration is, for any reason whatsoever, unenforceable by an owner (or any other person) in a court of law or otherwise, Declarant shall have no liability of any kind as a result of such unenforceability, and each and every owner, by acceptance of a deed conveying a Lot acknowledges that Declarant shall have no such liability.

Section 9. FHA/VA Approval. As long as there is a Class B membership, the following, actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties (except as set forth herein); dedication of Common Property; and amendment of this Declaration of Covenants, Conditions and Restrictions

Declarant: CASTA DEVELOPMENT, INC.

By:   
Title: *President*

Signed, Sealed and delivered, this  
24 day of July, 2005.

Cynthia C. Wood  
Witness

Carla  
Notary Public  
CARLA LYON, N.P.  
BARROW COUNTY, GEORGIA  
MY COMMISSION EXPIRES AUG. 15, 2008