

## **Declaration of Covenants, Conditions, and Restrictions For Creekside At Monarch Ridge**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made this \_\_\_\_ day of \_\_\_\_\_, 2001, by Elrod Road Development, L.L.C., a Georgia limited liability corporation (the "Declarant").

Declarant desires to subject the real property described in Exhibit "A," which is attached and incorporated by reference to the terms of this Declaration. Declarant is the owner of such property. This Declaration imposes upon the Properties (as defined in Article I below) mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Properties, and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Properties.

Declarant hereby declares that all of the property described in Exhibit "A" and any additional property subjected to this Declaration by Supplemental Declaration (as defined in Article I below) shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the real property subjected to this Declaration. This Declaration shall be binding on all parties having any right, title or interest in the Properties or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.

### Article I DEFINITIONS

The terms in this Declaration and the exhibits to this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1 "Area of Common Responsibility": The Common Area, if any, together with those areas, if any, for which the Association assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration or other applicable covenants, contract, or agreement.

1.2 "Articles of Incorporation" or "Articles": The Articles of Incorporation of Creekside at Monarch Ridge Community Association, Inc., as filed with the Secretary of State for the State of Georgia.

1.3 "Association": Creekside at Monarch Ridge Homeowner's Association, Inc., a Georgia nonprofit corporation, its successors or assigns.

1.4 "Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as the board of directors under Georgia corporate law.

1.5 "Builder": Any Person who purchases one or more Units for the purpose of constructing improvements for later sale to consumers or purchases one or more parcels of land within the Properties for further subdivision, development, and/or resale in the ordinary course of such Person's business.

1.6 "By-Laws": The By-Laws of Creekside at Monarch Ridge Homeowner's Association, Inc., as they may be amended.

1.7 "Common Area": All real and personal property which the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners.

1.8 "Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the By-Laws, and the Articles of Incorporation.

1.9 "Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing



throughout the Properties. Such standard may be more specifically determined by Declarant or the Board of Directors.

1.10 "Covenant to Share Costs": Any agreement or contract between the Association and an owner or operator of property adjacent to the Properties for the allocation of expenses that benefit both the Association and the owner or operator of such property.

1.11 "Declarant": Elrod Road Development, L.L.C., a Georgia limited liability corporation, or any successor-in-title, or assign who takes title to any portion of the property for the purpose of development and/or sale and who is designed as the Declarant in a recorded instrument executed by the immediately preceding Declarant; provided there shall be only one Person or legal entity entitled to exercise the rights and powers of the "Declarant" hereunder at any one point in time.

1.12 "Design Guidelines": The architectural guidelines and procedures and applicable to all Units within the Properties.

1.13 "General Assessment": Assessments levied on all Units subject to assessment to fund any Common Expenses for the general benefit of all Units.

1.14 "Master Plan": The land use plan for the development of the Creekside at Monarch Ridge prepared by Farley-Collins, as it may be amended from time to time, which plan includes the property described on Exhibit "A."

1.15 "Member": A Person entitled to membership in the Association.

1.16 "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit.

1.17 "Mortgagee": A beneficiary or holder of a Mortgage.

1.18 "Mortgagor": Any Person who gives a Mortgage.

1.19 "Owner": One or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

1.20 "Person": A natural person, a corporation, a partnership, a trustee, or any other legal entity.

1.21 "Properties": The real property described on Exhibit "A," together with such additional property as is subjected to this Declaration in accordance with Article VII.

1.22 "Supplemental Declaration": An instrument filed in the Office of the Clerk of the Superior Court of Hall County, Georgia which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

1.23 "Unit": A portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land which is part of the Unit as well as any improvements thereon. The term shall include within its meaning, by way of illustration but not limitation, single-family detached houses on separately platted lots, as well as vacant land intended for development as such, but shall not include Common Area or property dedicated to the public.

In the case of a parcel of vacate land or land on which improvements are under construction, the parcel shall be

deemed to contain the number of Units designated for residential use for such parcel on the Master Plan or the site plan approved by Declarant, whichever is more recent, until such time as a subdivision plat is filed of record on all or a portion of the parcel. Thereafter, the portion encompasses by such plat shall constitute a separate Unit or Units as determined above, and the number of Units on the remaining land, if any, shall continue to be determined in accordance with this paragraph.

## Article II MEMBERSHIP AND VOTING RIGHTS

2.1 Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board may adopt. The Association shall also be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in the Design Guidelines. The Association shall perform its functions in accordance with this Declaration, the By-Laws, the Articles and the laws of the State of Georgia.

2.2 Membership. Every Owner shall be a Member of the Association. There is only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 2.3 and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is a corporation, partnership or other legal entity may be exercised by any officer, director, partner or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

### 2.3 Voting.

(a) Exercise of Voting Rights. Except as otherwise specified in this Declaration or the By-Laws, the vote for each Unit member shall be exercised by that Member. If there is more than one Owner of a particular Unit, the vote for such Unit shall be exercised as such co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

## Article III RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

3.1 Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Area, if any, and all improvements thereon (including, without limitation, furnishings, equipment, and other personal property of the Association used in connection with the Common Area), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to this Declaration, the By-Laws and consistent with the Community-Wide Standard.

3.2 Personal Property and Real Property for Common Use. The Association, through actions of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant or its designees may convey to the Association improved or unimproved real estate located within the properties described in Exhibit "A," personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association. Upon written request of Declarant, the Association shall re-convey to Declarant, at no cost to Declarant, any unimproved portions of the Properties originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.



3.3 Enforcement. The Association may impose sanctions for violations of this Declaration, any applicable Supplemental Declaration, the By-Laws, or Association rules in accordance with procedures set forth in the By-Laws, including reasonable monetary fines and suspension of the right to vote and to use any recreational facilities within the Common Area. In addition, the Association may exercise self-help to cure violation and may suspend any services it provides to the Unit of any Owner who is more than 30 days delinquent in paying any assessment or other charge due to the Association. All remedies set forth in this Declaration and the By-Laws shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of this Declaration or Association rules, if the Association prevails it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action from the violating Owner.

The Association, by contract or other agreement, may enforce county and city ordinances, if applicable, and permit Hall County to enforce ordinances on the Properties for the benefit of the Association and its Members.

3.4 Implied Rights, Board Authority. The Association may exercise any right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the By-Laws or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

3.5 Governmental Interests. For so long as the Declarant owns any property described on Exhibits "A," the Declarant may designate sites within the Properties for fire, police, water, sewer, and other utility facilities, parks, and other public or quasi public facilities. The sites may include Common Area, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site, if so directed by Declarant. The sites may include other property not owned by Declarant provided the owner consents.

3.6 Indemnification. The Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member.

3.7 Dedication of Common Area. The Association may dedicate portions of any Common Area to Hall County, Georgia, or to any other local, state, or federal governmental entity, subject to such approval as may be required herein.

3.8 Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. Neither the Association, the Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Properties, nor shall any of them be held liable for any loss or damage by reason or failure to provide adequate security or of ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other security system or measures can not be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants that the Association, its Board of Directors and committees, Declarant, and any successor Declarant are not insurers and that each Person using the Properties assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

3.9 Utility Lines. Each Owner, occupant, guest, and invitee acknowledge that neither the Association, the Board nor Declarant shall in any way be considered insurers or guarantors of health within the Properties and neither the Association, the Board, nor Declarant shall be held liable for any personal injury, illness or any other loss or damage caused by the present or malfunction of utility lines or utility sub-stations adjacent to, near, over, or on the Properties. Each Owner, occupant, guest, and invitee assumes all risk of personal injury, illness, or other loss or damage arising from the present of utility lines or utility sub-stations and further acknowledges that neither Declarant nor the Association have made any representations or warranties, nor has any Owner, occupant, guest, or invitee relied upon any representations or warranties, expressed or implied, relative to the condition or impact of



utility lines or utility sub-stations.

#### Article IV MAINTENANCE

##### 4.1 Association's Responsibility.

(a) The Association shall maintain and keep in good repair the Area of Common Responsibility, and any other area for which the Association has assumed responsibility and maintenance obligations, including the area surrounding the entrance of the property.

The Association may maintain other property which it does not own, including, without limitation, public sidewalks, storm drainage facilities, and other property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

(b) Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the General Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, any covenant to share costs, other recorded covenants, or agreements with the owner(s) thereof.

4.2 Owner's Responsibility. Each Owner shall maintain his or her Unit and all structures, parking areas, and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to any agreement, Supplemental Declaration or other declaration of covenant applicable to such Unit. In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner. The Association shall afford the Owner reasonable notice and an opportunity to cure the problems prior to entry, except when entry is required due to an emergency situation.

#### Article V ANNEXATION AND WITHDRAWAL OF PROPERTY

5.1 Annexation without Approval of Membership. Declarant shall have the right to annex additional property and subject said additional property to these covenants without approval of the membership, provided that any such additional property shall be part of the larger plan of development of the community. Annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the Office of the Clerk of the Superior Court of Hall County, Georgia. Any such annexation shall be effective upon filing unless otherwise provided therein.

5.2 Withdrawal of Property. The Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property for the purpose of removing any portion of the Properties then owned by the Declarant or its affiliates or the Association from the coverage of this Declaration, to the extent originally included in error or as a result of any changes whatsoever in the plans for the Properties, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Properties.

5.3 Additional Covenants and Easements. The Declarant may unilaterally subject to any portion of the property submitted to this Declaration initially or by Supplemental Declaration to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrent with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than the Declarant. Any Supplemental Declaration annexing additional property may supplement, create exceptions to, or otherwise modify



the terms of this Declaration as it applies to such additional property in order to reflect the different character and intended use of such property. Any Supplemental Declaration may be amended in accordance with its terms and such amendment shall not require compliance with Section 13.2 of this Declaration.

5.4 Amendment. This Article shall not be amended without the prior written consent of Declarant so long as the Declarant owns any property described in Exhibit "A" .

## Article VI ASSESSMENTS

6.1 Creation of Assessments. There are hereby created, and the Association is hereby authorized to levy, assessments for expenses incurred or anticipated to be incurred by the Association in performing its responsibilities and exercising its rights and powers under this Declaration. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

All assessments, together with interest (at a rate not to exceed the highest rate allowed by Georgia law) computed from the date the delinquency first occurs, late charges, costs, and reasonable attorney's fees, shall be a charge and continuing lien upon each Unit against which the assessment is made until paid, as more particularly provided in Section 8.7. Each such assessment, together with interest, late charges, costs, and reasonable attorney's fees, also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Unit by foreclosure or power of sale as provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Association shall, upon request, furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as the Board may establish.

No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

6.2 Lien for Assessments. The Association shall have a lien against each Unit to secure payment of delinquent assessments, as well as interest, late charges (subject to the limitation of Georgia law), and costs of collection (including attorneys fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior; and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and judicial foreclosure.

The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure; (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessments, its equal pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may sue for unpaid Common Expenses and costs without foreclosing or waiving the lien securing the same.



The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 6.5., including such acquirer, its successors and assigns.

6.3 Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Unit on the first day of the month following: (a) the month in which the Unit is conveyed to an Owner other than Declarant or a Builder, or (b) the month in which the board levies assessments pursuant to this Article, whichever is later; provided however, assessments shall not commence on any unoccupied Unit used for a model home during the period it is used for such purposes.

6.4 Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

6.5 Exempt Property. The following property shall be exempt from payment of General Assessments and Special Assessments:

(a) All Common Area and such portions of the property owned by the Declarant as are included in the Area of Common Responsibility; and

(b) Any property dedicated to and accepted by any governmental authority or public utility.

## Article VII

### ARCHITECTURAL STANDARDS

7.1 General. No structure shall be placed, erected, or installed upon any Unit, and no improvements (including exterior alteration of existing improvements) shall take place except in compliance with this Article. All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect unless otherwise acceptable to the Declarant in its sole discretion. This Article may not be amended without the Declarant's written consent so long as the Declarant owns any land subject to this Declaration.

7.2 Architectural Review. Responsibility for administration of the Design Guidelines, as defined below, and review of all applications for construction and modifications under this Article shall be handled by the two committees as described in subsections (a) and (b) below. The members of the committees need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board. The Board may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review.

The Declarant shall have exclusive jurisdiction over all original construction on any portion of the Properties, and shall have the exclusive right of architectural approval.

7.3 Guidelines and Procedures.

(a) The Declarant shall prepare the initial Design Guidelines which shall apply to all construction activities within the



Properties. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary from one portion of the Properties to another depending upon the location, unique characteristics, and intended use.

(b) All fencing, out structures or utility sheds must be approved by Declarant .

(c) Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements shall be submitted to the Declarant (for original construction) or to the Modification Committee (for modifications to existing improvements) for review and approval (or disapproval). In addition, information concerning irrigation systems, drainage, and other features of proposed construction shall be submitted as applicable. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the appropriate committee pursuant to the Design Guidelines, including, without being limited to:

(i) a site plan showing the location of all proposed and existing structures on the Unit, including building setbacks, open space, driveways, walkways and parking spaces, including the number thereof and all siltation and erosion control measures;

(ii) a foundation plan;

(iii) a floor plan containing a minimum of 1600 square feet of heated space for any primary residence;

(iv) exterior elevation of all proposed structures and alterations to existing structures, as such structures will appear after all back-filling and landscaping are completed;

(v) specifications of materials, color scheme, lighting scheme and other details affecting the exterior appearance of all proposed structures and alterations to existing structures; and

(vi) plans for landscaping and grading.

In reviewing each submission, the Declarant may consider the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other things.

In the event that the Declarant or the committee fails to approve or to disapprove any application within 30 days after submission of all information and materials reasonably requested, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing.

7.4 No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

7.5 Variance. The Declarant or the MC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the Declarant or the MC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

7.6 Limitation of Liability. Review and approval of any application pursuant to this Article is made on the basis of



aesthetic considerations only and neither the Declarant nor the MC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board, any committee, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Unit.

Unless otherwise specified in writing by the committee granting approval, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Unit, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, the Association shall be authorized to enter upon the Unit and remove or complete any incomplete work and to assess all costs incurred against the Unit and the Owner thereof.

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded by the Board from the Properties, subject to the notice and hearing procedures contained in the By-Laws. In such event, neither the Association, its officers, or directors shall be held liable to any Person for exercising the rights granted by this paragraph.

In addition to the foregoing, the Association and the Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article.

#### Article VIII

#### USE RESTRICTIONS AND RULES

8.1 Plan of Development; Applicability; Effect. Declarant has established a general plan of development for the Properties as a master planned community in order to enhance all Owners' quality of life and collective interests, the aesthetics and environment within the Properties, and the vitality of and sense of community within the Properties, all subject to the Board's and the Members' ability to respond to changes in circumstances, conditions, needs, and desires within the master planned community. All provisions of this Declaration and any Association rules shall apply to all Owners, occupants, tenants, guests and invitees of any Unit. Any lease on any Unit shall provide that the lessee and all occupants of the leased Unit shall be bound by the terms of this Declaration, the By-Laws, and the rules of the Association.

8.2 Authority to Promulgate Use Restrictions and Rules. Subject to the terms of this Article, such initial use restrictions may be modified in whole or in part, repealed or expanded as follows:

(a) Subject to the Board's duty to exercise sound business judgment and reasonable-ness on behalf of the Association and its Members, the Board may adopt rules which modify, cancel, limit, create exceptions to, or expand the use restrictions. The Board shall send notice by mail to all Owners concerning any such proposed action at least five business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Such action shall become effective unless disapproved at a meeting by Members representing at least 51% of the total votes in the Association. The Board shall have no obligation to call a meeting of the Members to consider disapproval except upon petition of the Members as required for special meetings in the By-Laws.

(b) Alternatively, the Members, at a meeting duly called for such purpose as provided in the By-Laws, may adopt rules which modify, cancel, limit, create exceptions to, or expand the use restrictions and rules previously adopted by a vote of Members representing at least 51% of the total votes in the Association.

(c) At least 30 days prior to the effective date of any action taken under subsections (a) or (b) of this Section, the Board shall send a copy of the rule to each Owner. The Association shall provide without cost, a copy of the use restrictions and rules then in effect (hereafter the "Use Restrictions and Rules") to any requesting Member or



## Mortgages.

8.3 Owners' Acknowledgment. All Owners and occupants of Units are given notice that use of their Units is limited by the Use Restrictions and Rules as they may be amended, expanded and otherwise modified hereunder. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected and that the Use Restrictions and Rules may change from time to time.

## Article IX EASEMENTS

### 9.2 Easements for Utilities, Etc.

(a) There are hereby reserved to the Declarant (so long as the Declarant owns any property described on Exhibit "A" of this Declaration), the Association, and the designees of each (which may include, without limitation, Hall County, Georgia and any utility company), perpetual nonexclusive easements for the purpose of installing, repairing, maintaining, operating, replacing and removing cable television systems, master television antenna systems, security and similar systems, roads, walkways, pathways and trails, lakes, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewer, storm drainage, telephone, gas, and electric facilities and appurtenances, over, on, across, under, and through the Properties, as well as an easement for access of vehicular and pedestrian traffic over, across and through the Properties, as necessary, to exercise the perpetual nonexclusive easements described above.

Declarant specifically grants to the local water supplier, electric company, telephone company, and natural gas supplier easements across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters and boxes, as applicable.

(b) There is hereby reserved to the Declarant, so long as the Declarant owns any property described on Exhibit "A" of this Declaration, the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described on Exhibit "A".

(c) Any damage to a Unit resulting from the exercise of the easements described in subsections (a) and (b) above shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

(d) Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or, intending to hold, an interest in the Properties, or at any other time, (i) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved hereunder, or (ii) to define the limits of any such easements; provided, however, Declarant shall relocate, at its own expense, any utility lines or facilities located on or under that portion of the Properties being released.

## Article X MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in the Properties. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

10.1 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely



written notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;
- (b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Declaration or By-Laws relating to such Unit or the Owner or Occupant which is not cured within 60 days;
- (c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or
- (d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

10.2 No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

10.3 Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

10.4 Amendment by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of its respective requirements, which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may record an amendment to this Article to reflect such changes.

10.5 Applicability of Article X. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Georgia law for any of the acts set out in this Article.

10.6 Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within 30 days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

#### Article XI DECLARANT'S RIGHTS

Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration or the By-Laws. No such transfer shall be effective unless it is in a written instrument signed by the Declarant.

The Declarant and Builders authorized by Declarant may maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of the Declarant may be reasonably required, convenient, or incidental to the construction or sale of such Units, including, but not limited to, business offices, signs, model units, and sales offices. The Declarant and authorized Builders shall have easements for access to and use of such facilities.

The Declarant and its employees, agents and designees shall also have a right and easement over and upon all of the Properties for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

No Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any



attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Office of the Superior Court of Hall County, Georgia.

Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any Use Restrictions and Rules or Design Guidelines shall be effective without prior notice to and the written approval of Declarant so long as the Declarant owns any portion of the Properties primarily for development and sale.

The Declarant, acting in its sole and absolute discretion, retains the right, but no the obligation, as long as it owns any property described in Exhibit "A" to establish separately developed residential neighborhoods ("Neighborhoods"), recreational, nonresidential, and amenity areas, or some, all or none of these, within the Properties, to designate portions of the Common Area for the exclusive use of one or more, but less than all, Neighborhoods ("Exclusive Common Area") and to designate groups of Owners to vote on separate slates for the election of representatives to the Board. Every Unit situated within a designated Neighborhood may be subjected to additional covenants, conditions, easements, restrictions, and additional assessments for services provided to Units within such designated Neighborhood. Neighborhood assessments to fund Association expenses for one or more, but less than all, Neighborhoods if any, shall be subject to the lien provisions for General Assessments provided in Article VIII. Every Unit situated within a designated Neighborhood may be subjected to assessments for premiums for insurance on Exclusive Common Areas. The Declarant may impose such rights and relationships pertaining to any Private Amenity it may add to the community, as it deems proper.

This Article may not be amended without the written consent of the Declarant. The rights contained in this Article shall terminate upon the earlier of (a) 20 years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

## Article XII INITIAL USE RESTRICTIONS

The following restrictions shall apply to all of the Properties until such time as they are amended, modified, repealed or limited by rules of the Association adopted pursuant to Article X of this Declaration.

12.1 General. The Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, offices for any property manager retained by the Association, business offices for the Declarant or the Association, or any information center and/or sales office consistent with this Declaration and any Supplemental Declaration).

12.2 Restricted Activities. The following activities are prohibited within the Properties unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors or Declarant:

(a) Parking of commercial vehicles or equipment, recreational vehicles, boats and other watercraft, trailers, stored or inoperable vehicles in places other than enclosed garages or such other location which is not visible from any public street; provided, construction service and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit.

(b) Raising, breeding or keeping of animals, livestock, or poultry of any kind, except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted in a Unit; however, those pets which are permitted to roam free, or, in the sole direction of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet. Pets shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling. Pets shall be registered, licensed and inoculated as required by law.

(c) Any activity which emits foul or obnoxious odors outside the Unit or creates noise or other conditions which tend



to disturb the peace or threaten the safety of the occupants of other Units.

(d) Any activity which violates local, state or federal laws or regulations; however, the Board shall have no obligation to take enforcement action in the event of a violation.

(e) Pursuit of hobbies or other activities which tend to cause an unclean, unhealthy or untidy condition to exist outside of enclosed structures on the Unit.

(f) Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Units.

(g) Outside burning of trash, leaves, debris or other materials, except during the normal course of constructing a dwelling on a Unit.

(h) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes.

(i) Use and discharge of firecrackers and other fireworks.

(j) Dumping of debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances or pollutant in any drainage ditch, stream, pond, or lake, or elsewhere within the Properties, except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff, and Declarant may dump and bury rocks and trees removed from a building site on such building site.

(k) Accumulation of rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved containers.

(l) Obstruction or re-channeling of drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that the Declarant and the Association shall have such right; provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Unit without the Owner's consent.

(m) Subdivision of a Unit into two or more Units, or changing the boundary lines of any Unit after a subdivision plat including such Unit has been approved and filed in the Office of the Clerk of the Superior Court of Hall County, Georgia, except that the Declarant and Builders (subject to Declarant approval) shall be permitted to subdivide or re-plat Units which they own.

(n) Operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years, except that Declarant and its assigns may operate such a program with respect to Units which it owns.

(o) Discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge.

(p) On-site storage of gasoline, heating, or other fuels, except that a reasonable amount of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment.

(q) Any business, trade, or similar activity, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as (i) the existence or operation of the business activity is not apparent or

detectable by sight, sound, or smell from outside the Unit; (ii) the business activity conforms to all zoning requirements for the Properties; (iii) the business activity does not involve regular visitation of the Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Properties; and (iv) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required.

The leasing of a Unit shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by the Declarant or a builder approved by the Declarant with respect to its development and sale of the Properties or its use of any Units which it owns within the Properties.

(r) Any activities which materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within the Properties.

(s) Conversion of any carport or garage to finished space for use as an apartment or other integral part of the living area on any Unit without the prior approval of the appropriate committee.

(t) Operation of motorized vehicles on pathways or trails maintained by the Association.

(u) Erecting any sign of any kind within the Properties without the written consent of the NCC except for the following:

(i) such signs as may be required by legal proceedings;

(ii) not more than one "For Sale" sign of a size no larger than 24 inches in height and 30 inches in width; and

(iii) not more than one professional security sign of such size deemed reasonable by the Board in its sole discretion.

12.3 Prohibited Conditions. The following shall be prohibited within the Properties:

(a) Plants, animals, devices or other things of any sort whose activities or existence in any way is unlawful, noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties.

(b) Structures, equipment or other items on the exterior portions of a Unit which have become rusty, dilapidated or otherwise fallen into disrepair.

(c) Sprinkler or irrigation systems or wells of any type which draw upon water from lakes, streams, ponds or other ground or surface waters within the Properties, except that Declarant, and the Association shall have the right to draw water from such sources.

(d) Any construction, erection, or placement of a thing, permanently or temporarily, on the outside portions of the Unit whether such portion is improved or unimproved, unless approved by the Modifications Committee as set forth in Article IX of the Declaration. This shall include, without limitation, above ground swimming pools; antennas, satellite dishes, or other apparatus for the transmission or reception of television, radio, satellite, or other signals of any kind.

12.4 Leasing of Units. "Leasing," for purposes of this Paragraph, is defined as regular, exclusive occupancy of a

Unit by any person, other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. All leases shall be in writing. The Board may require a minimum lease term. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Unit Owner within 10 days of execution of the lease. The owner must make available to the lessee copies of the Declaration, By-Laws, and the rules and regulations.

## Article XIII GENERAL PROVISIONS

### 13.1 Duration.

(a) Unless terminated as provided herein, this Declaration shall have perpetual duration. If Georgia law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of 20 years each, unless terminated as provided herein.

(b) Unless otherwise provided by Georgia law, in which case such law shall control, this Declaration may not be terminated within 20 years of the date of recording without the consent of all Owners. Thereafter, it may be terminated only by recording in the public records an instrument signed by Owners of at least 75% of the total Units within the Properties and by the Declarant, if the Declarant owns any portion of the Properties. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

### 13.2 Amendment.

(a) By Declarant. The Declarant may unilaterally amend this Declaration if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) to enable any institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make or purchase mortgage loans on the Units; (iv) to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Units; or (v) to satisfy the requirements of any governmental agency. However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing. So long as the Declarant still owns property described in Exhibits "A" for development as part of the Properties, it may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner or title to any Unit without the consent of the affected Owner.

(b) By Owners. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of members representing 67% of the total votes in the Association, and the consent of the Declarant, so long the Declarant has an option to subject additional property to this Declaration.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

No amendment may remove, revoke, or modify any right or privilege of the Declarant without the written consent of the Declarant or the assignee of such right or privilege.

(c) Effective Date and Validity. To be effective, any amendment must be recorded in the Office of the Clerk of the Superior Court of Hall County, Georgia.



If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such owner has the authority so to consent, and no contrary provision in any Mortgage or contract between the owner and a third party will affect the validity of such amendment.

13.3 Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

13.4 Litigation. Except as provided below, no judicial or administrative proceedings shall be commenced or prosecuted by the Association unless approved by a vote of 75% of the Members. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments; (c) proceedings involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it.

13.5 Cumulative Effect; Conflict. The covenants, restrictions, and provisions of this Declaration shall be cumulative with the provisions of any applicable Supplemental Declaration. Nothing in this Section shall preclude any Supplemental Declaration or other recorded declaration, covenants and restrictions applicable to any portion of the Properties from containing additional restrictions or provisions which are more restrictive than set forth in this Declaration, and the Association shall have the standing and authority to enforce the same.

13.6 Use of the Words "Creekside at Monarch Ridge". No Person shall use the words "Creekside at Monarch Ridge" or any derivative in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the term "Creekside at Monarch Ridge" in printed or promotional matter where such term is used solely to specify that particular property is located within Creekside at Monarch Ridge, and the Association shall be entitled to use the words "Creekside at Monarch Ridge" in its name.

13.7 Compliance. Every Owner and occupant of any Unit shall comply with this Declaration, any applicable Supplemental Declaration, the By-Laws, and the rules of the Association. Failure to comply shall be grounds for an action by the Association or, in a proper case, by any aggrieved Unit Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association.

13.8 Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration the date and year first written above.

DECLARANT:

ELROD ROAD DEVELOPMENT, L.L.C.,  
a Georgia limited liability corporation

By: \_\_\_\_\_  
Robert D. Robison, General Manager



STATE OF GEORGIA  
COUNTY OF HALL

**SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR CREEKSIDE AT MONARCH RIDGE**

**Phase III**

(And Additional Covenants for Certain Lots in Phases II and III)

THIS SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2005, by Elrod Road Development, L.L.C., a Georgia limited liability corporation (the "Declarant").

WHEREAS, Declarant filed that certain Declaration of Covenants, Conditions, and Restrictions for Creekside at Monarch Ridge Phase I, on April 16, 2001, in Book 3863, Pages 353-375, Hall County, Georgia Records; and

WHEREAS, Declarant now desires to supplement said Declaration by adding additional property to be subject to said Declaration; and

WHEREAS, Declarant also desires to establish additional restrictions for Lot 85 of Phase II and Lots 46, 55, 56, 57, 58, 59, 60, 63, 64, 65, 66, 67, 68, 69, 70, 75, 76, 77, 78, and 79 of Phase III, which are serviced by a community sewer system;

NOW, THEREFORE, Declarant hereby declares that all of the property described in Exhibit "A" shall be held, sold, used and conveyed subject to those certain easements, restrictions, covenants, and conditions as recorded in Book 3863, Pages 353-375, Hall County, Georgia Records, which shall run with the real property subjected to the Declaration. This Declaration shall be binding on all parties having any right, title or interest in the property described in Exhibit "A" or any part thereof, their heirs, successors, successors in title, and assigns and shall inure to the benefit of each owner thereof. In addition, Declarant states these additional covenants which are hereby made a part of the Declaration as to Lot 85 of Phase II and Lots 46, 55, 56, 57, 58, 59, 60, 63, 64, 65, 66, 67, 68, 69, 70, 75, 76, 77, 78, and 79 of Phase III;

1. Special Assessments. Declarant and/or the Homeowners Association shall have the authority to make special assessments against the owners of Lot 85 of Phase II and Lots 46, 55, 56, 57, 58, 59, 60, 63, 64, 65, 66, 67, 68, 69, 70, 75, 76, 77, 78, and 79 of Phase III for the maintenance and repair of the community sewer system servicing said lots. These special assessments are in addition to any other fees assessed by the Homeowners Association. All fees collected by the Homeowners Association shall be segregated and held in a special account to be used exclusively for the operation and maintenance of said system. Said assessments shall be mandatory for said lots.

2. Inspection. Hall County and/or its agents or representatives shall have the right and authority to inspect, from time to time, as determined in sole discretion of Hall County and its representatives, the community sewer system and all lines to said system. The owners of said lots



hereby grants access to Hall County and its agents or representatives for the purposes of inspecting the system.

3. Liability of Owners for Costs of Repair. In the event the costs of repair, if any, exceed the amounts collected by the Homeowners Association, the owners of said lots shall be responsible for any shortfall on a pro-rata basis. Any and all rights or obligations of Declarant or Homeowners Association with regard to special assessments and/or liens for the costs of maintenance, repair or operation of the system may be exercised by Hall County.

4. Maintenance Agreement. The Association shall be required to enter into and maintain in good standing a contract with a licensed contractor for the continued and periodic maintenance and clean out of the community sewer system. The contract shall be required until such time as the properties serviced by said community system are connected to a public sewer system.

5. Surety Bond. The Association shall maintain a surety bond for the replacement of the system in the event of the failure of the community system. The bond shall list Hall County, Georgia as a co-insured. However, all premiums required for the bond shall be the responsibility of the Association.

6. Limited Access. The community sewer system area shall be off limits to vehicular traffic, except as may be necessary for repair and maintenance of the area.

7. Ownership of System. In the event the Homeowners' Association is dissolved or ceases to exist for any reason, ownership of the community sewer system area shall revert to the owners of the above referenced lots, who shall have all rights and/or obligations as set forth herein.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration the date and year first written above.

DECLARANT:

ELROD ROAD DEVELOPMENT, L.L.C., a Georgia limited liability corporation

By: \_\_\_\_\_ [Seal]

Title: \_\_\_\_\_

Signed, sealed and delivered in my presence this \_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public



## **EXHIBIT “A”**

### **Legal Description**

ALL THAT TRACT or parcel of land lying and being in Land Lots 77, 78 and 79 of the 10<sup>th</sup> District of Hall County, Georgia and being Lots 46 and 55 through 79, of Creekside at Monarch Ridge, Phase Three as shown on that certain subdivision plat by Farley-Collins Associates dated October 31, 2001, revised November 27, 2001, entitled “Creekside at Monarch Ridge Phase Three” and recorded on November 29, 2001, in Plat Slide 808, pages 14A-21A of the Hall County Plat Records, which plat is incorporated herein by reference and made a part hereof.