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[SPACE ABOVE RESERVE FOR RECORDING DATA]

Return to: Weissman, Nowack, Curry & Wilco, P.C.  
Two Midtown Plaza, 15th Floor  
1349 West Peachtree Street  
Atlanta, Georgia 30309  
Attention: Ellen J. Fleming, Esq.

Instructions to Clerk: Cross Reference to Deed  
Books set forth below; Index each  
signatory in grantor index; Index  
Chestnut Springs Homeowners' Association, Inc.  
in Grantor and Grantee Indexes

The common property (Exhibit "C") and all lots are located in  
Land Lot 813, 814, 815, 842 and 843 of the 16<sup>th</sup> District, 2<sup>nd</sup> Section

STATE OF GEORGIA

Cross Reference:

Deed Book 2414

Page 433

COUNTY OF COBB

Deed Book 2636

Page 201

Deed Book 2734

Page 156

<p style="text-align: center;"><b>DECLARATION OF PROTECTIVE COVENANTS AND MANDATORY MEMBERSHIP FOR CHESTNUT SPRINGS</b></p>
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Prepared by:

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THIS DECLARATION SUBMITS THE PROPERTY TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNERS' ASSOCIATION ACT, O.C.G.A. SECTION 44-3-220, ET SEQ.

WHEREAS, Chestnut Springs, a joint venture, recorded a Declaration of Protective Covenants for Chestnut Springs, Unit IV on September 21, 1981, in Deed Book 2414, Page 433, et seq. ("First Declaration"), a Declaration of Protective Covenants for Chestnut Springs Subdivision, Unit V on April 19, 1983 in Deed Book 2734, Page 156, et seq. ("Second Declaration"), a Declaration of Protective Covenants for Chestnut Springs Subdivision, Unit VI on December 6, 1982 in Deed Book 2636, Page 291, et seq. ("Third Declaration"), and the Third Declaration was amended by an amendment recorded at Deed Book 4928, Page 462, et seq., being recorded in Cobb County, Georgia Records (hereinafter the First, Second and Third Declarations shall be collectively referred to as the ("Original Declaration")); and

WHEREAS, Unit I, Unit IIA, Unit IIB, Unit IIC and Unit III of the Chestnut Springs Subdivision are subject to the Protective Covenants contained on the Plats recorded at Plat Book 89, Page 83; Plat Book 76, Page 117; Plat Book 75, Page 53; Plat Book 76, Page 162 and Plat Book 79, Page 157 respectively, being recorded in the Cobb County, Georgia records and

WHEREAS, Lot Owners at Chestnut Springs Subdivision in Cobb County, Georgia, who have executed this Declaration, are the Owners of that certain real property described in signature page(s) affixed hereto and as are listed on Exhibit "A" attached hereto and incorporated herein by reference and desire to subject the Property to the terms and provisions of this Declaration of Protective Covenants and Mandatory Membership for Chestnut Springs ("Declaration"), and to hereby subject the Property to continuing permanent membership in the Chestnut Springs Homeowners Association, Inc. ("Association"); and authorize and direct the Board of Directors to subject the Common Property, as described in Exhibit "C" as attached hereto and incorporated by this reference, to the terms and provisions of this Declaration; and

WHEREAS, the undersigned officers of the Association desire to approve this Declaration and membership in the Association on behalf of the Association;

WHEREAS, the Lot Owners who have executed this Declaration do hereby consent, on behalf of such Owner, Owner's successors, successors-in-title, heirs, and assigns, that such Owner's Lot shall be owned, held, transferred, sold, conveyed, used, occupied, mortgaged, or otherwise encumbered subject to all of the terms, provisions, covenants, and restrictions contained in this Declaration, as a Member (as defined in the Declaration) of the Association, all of which shall run with the title to Owner's Lot and shall be binding upon all persons having any right, title, or interest in Owner's Lot, their respective heirs, legal representatives, successors, successors-in-title, and assigns. Each Owner understands and acknowledges that, by submitting Owner's Lot to Participating Membership (as defined in the Declaration) in the Association, each Owner is hereby subjecting Owner's Lot to mandatory assessments in favor of the Association, with lien rights afforded therefor, in accordance with the Declaration. Each Owner does further consent to the submission of the Common Property (as defined in the Declaration) to this Declaration; and

NOW, THEREFORE, the undersigned officers of the Association, and all Lot Owners who have executed this Declaration, hereby declare that all of the Property described herein and in Exhibit "A" and Exhibit "C" shall be held, sold and conveyed subject to this Declaration, which is for the purpose of enhancing and protecting the desirability and attractiveness of, and which shall run with, the Property, and be binding on all parties having any right, title or interest in the Property or any part thereof, and shall, subject to all limitations herein provided, inure to the benefit of each Owner of any portion of the Property, his heirs, grantees, distributees, successors, successors-in-title and assigns and to the benefit of the Association:

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**DECLARATION OF PROTECTIVE COVENANTS AND MANDATORY MEMBERSHIP  
FOR CHESTNUT SPRINGS**

1. NAME.

The name of the Property is Chestnut Springs Subdivision (hereinafter sometimes called "Chestnut Springs"), which property is a residential property owner's development which hereby submits to the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, et seq. (Michie 1982).

2. DEFINITIONS.

Generally, terms used in this Declaration, the Bylaws, and the Articles of Incorporation shall have their normal, generally accepted meanings or the meanings given in the Act or the Georgia Nonprofit Corporation Code. Unless the context otherwise requires, certain terms used in this Declaration shall be defined as set forth below.

(a) Act means the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, et seq. (Michie 1982), as may be amended.

(b) Additional Property means all Lots shown on the Chestnut Springs plats being those plats for Chestnut Springs Units I, IIA, IIB, IIC, III, IV, V and VI as recorded in Plat Book 89, Page 83; Plat Book 76, Page 117; Plat Book 75, Page 53; Plat Book 76, Page 162; Plat Book 79, Page 157; Plat Book 79, Page 1; Plat Book 89, Page 84 and Plat Book 85, Page 84, respectively, which have not submitted to the terms and provisions of this Declaration.

(c) Articles or Articles of Incorporation mean the Articles of Incorporation of Chestnut Springs Homeowners' Association, Inc., filed with the Secretary of State of the State of Georgia, as amended.

(d) Association means Chestnut Springs Homeowners' Association, Inc., a Georgia nonprofit corporation, its successors or assigns.

(e) Association Legal Instruments means this Declaration and all exhibits hereto, including the Association's Bylaws, and the plats, all as may be supplemented or amended.

(f) Board or Board of Directors means the elected body responsible for management and operation of the Association.

(g) Bylaws mean the Bylaws of Chestnut Springs Homeowners' Association, Inc., attached to this Declaration as Exhibit "D" and incorporated herein by this reference.

(h) Chestnut Springs Subdivision means all Lots shown on the Chestnut Springs' plats being those plats for Chestnut Springs' Units I, IIA, IIB, IIC, III, IV, V and VI as recorded in Plat Book 89, Page 83; Plat Book 76, Page 117; Plat Book 75, Page 53; Plat Book 76, Page 162; Plat Book 79, Page 157; Plat Book 79, Page 1; Plat Book 89, Page 84 and Plat Book 85, Page 84, respectively.

(i) Common Expenses mean the expenses anticipated or actually incurred by the Association in maintaining, repairing, replacing, and operating the Common Property and otherwise for the benefit of all Member Lots.

(j) Common Property means all property owned, maintained or operated by the Association for the common benefit of the Members, including the entry features, tennis courts, swimming pool, clubhouse, lake, parking areas, and facilities, shrubbery and landscaping associated with such areas.

(k) Community Membership means a Participating, Permanent Membership in the Association wherein the Community Member shall have the right to vote on any and all matters. Community Members shall be entitled to use only the lake and clubhouse facilities and such member shall not be entitled to use or enjoy any of the Chestnut Springs pool and tennis facilities.

(l) Community-Wide Standard means the standard of conduct, maintenance, or other activity generally prevailing in the Property. Such standard may be more specifically determined by the Board and the ACC.

(m) Eligible Mortgage Holder means a holder of a first mortgage secured by a Lot who has requested notice of certain items as set forth herein.

(n) Lot means a portion of the Property or the Additional Property intended for ownership and use as a single-family dwelling site as permitted in this Declaration and as shown on the plats for the Property or the Additional Property, or amendments or supplements thereto, recorded in the Cobb County, Georgia land records.

(o) Majority means those eligible votes, Owners, or other group as the context may indicate totaling more than fifty (50%) percent of the total eligible number.

(p) Member means a Lot Owner whose Lot has been subjected to Participating Membership in the Association by execution hereof or by written consent recorded in the Cobb County, Georgia land records, as provided herein, and which Lot therefore is a portion of the Property and, if any, Non-Permanent Members.

(q) Member Lot or Participating Member Lot means a Lot subjected to Participating Membership in the Association hereunder.

(r) Mortgage means to any mortgage, deed to secure debt, deed of trust, or other transfer or conveyance for the purpose of securing the performance of an obligation, including, but not limited to, a transfer or conveyance of fee title for such purpose.

(s) Mortgagee or Mortgage Holder means the holder of any Mortgage.

(t) Non-Permanent Member means an Owner of a Lot in Chestnut Springs whose Lot has not been subjected to Permanent Membership in the Association by written consent recorded in the Cobb County, Georgia land records.

(u) Occupant means any Person occupying all or any portion of a dwelling or other property located within the Property for any period of time, regardless of whether such Person is a tenant or the Owner of such property.

(v) Officer means an individual who is elected by the Board to serve as President, Vice President, Secretary, or Treasurer, or such other subordinate officers as the Board may determine necessary.

(w) Owner means the record title holder of a Lot within the Chestnut Springs Subdivision, but shall not include only a Mortgage Holder on the Lot.

(x) Participating Member means a Lot Owner whose Lot has been subjected to Permanent Membership in the Association by signature hereto or by written consent recorded in the Cobb County, Georgia land records, as provided in Paragraph 4 hereof, and which Lot therefore is a portion of the Property. A Participating Member shall be either a Community Member or a Recreational Member.

(y) Permanent Membership means a membership in the Association which is permanent and mandatory and which cannot be separated from a Lot, but rather is appurtenant to and runs with title to a Lot by virtue of submission or written consent, recorded in the Cobb County, Georgia land records as provided herein.

(z) Person means any individual, corporation, firm, association, partnership, trust, or other legal entity.

(aa) Property means that real estate which is submitted to the Act and the provisions of this Declaration at the time of recording of this Declaration, being the Member Lots as submitted to this Declaration and the Property as described in Exhibit "C" attached hereto and incorporated herein by reference, and any portion of the Additional Property as later submitted. The Property includes the Common Property. The Property is a residential property owners development which hereby submits to the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, et seq. (Michie 1982), as may be amended.

(bb) Recreational Membership means a Participating, Permanent Membership in the Association wherein the Recreational Member shall have the right to vote on any and all matters and shall have a right to use and enjoy any and all Chestnut Springs recreational facilities, including but not limited to the pool and tennis facilities, lake and the clubhouse facility, as well as all other recreational facilities. Recreational Members shall automatically be Community Members.

3. LOCATION, PROPERTY DESCRIPTION, AND PLATS.

The Property subject to this Declaration and the Act is located in Land Lots 813, 814, 815, 842 and 843 of the 16th District, 2nd Section of Cobb County, Georgia, being more particularly described in the signatory portion of this Declaration and in Exhibits "A" and "C" attached to this Declaration, which exhibits are specifically incorporated herein by this reference. Plats of survey relating to the Property have been filed in Plat Book 89, Page 83; Plat Book 76, Page 117; Plat Book 75, Page 53; Plat Book 76, Page 162; Plat Book 79, Page 157; Plat Book 79, Page 1; Plat Book 89, Page 84 and Plat Book 85, Page 84 of the Cobb County, Georgia records (collectively the "Plats"). The Plats are incorporated herein by reference as fully as if the same were set forth in their entirety herein.

4. EFFECTIVE DATE.

This Declaration shall not be effective, whether or not it is recorded, until and unless: (a) this Declaration and the signature pages of Owners attached hereto have been recorded in the Cobb County, Georgia land records, (b) at least one hundred sixty-five (165) Owners have signed this Declaration, and (c) the Association, acting by and through its Board of Directors has determined, in its discretion, to record this Declaration and the Exhibits thereto, such determination being conclusively illustrated by execution of this Declaration by two Association officers. An open enrollment period shall begin on the Effective Date of this Declaration and shall continue for a period of thirty (30) calendar days thereafter. Owners who have not signed this Declaration before the Effective Date shall be permitted to execute a Consent Form (which is identical to the Model Consent Form attached hereto and incorporated herein as Exhibit "B") and become Participating Members of the Association with the same rights and obligations as all other Participating Members and with no obligation to pay any Initiation Fee or other penalty during said open enrollment period. Submission of portions of the Additional Property, through the use of a Consent Form identical to Exhibit "B" hereto may be accomplished by the recording of such form at any time and from time to time subsequent to the recording of this Declaration, subject to the terms of this Declaration, provided, the Board shall have the discretion to accept such additional Consent Forms on such terms and form as they determine in their discretion (including the payment of an initiation fee) and such Consent Forms shall be valid only if executed by at least one officer of the Association and recorded by the Association.

5. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS.

(a) Membership Categories.

(i) Recreational Members. Each Person who is the record owner of a fee or undivided interest in any Lot, and whose Lot is submitted to the Recreational Membership in the Association by execution hereof or by a Consent Form (as set forth above) recorded in the Cobb County, Georgia land records, shall be a Participating Member of the Association and shall be entitled to vote as set forth herein and in the Bylaws of the Association on any and all matters and shall have a right to enjoy any and all Chestnut Springs recreational facilities. Participating Membership shall be appurtenant to and may not be separated from ownership of any such Member Lot.

Recreational Members shall automatically be Community Members. An Owner listed on Exhibit "A" of this Declaration, may convert or change his or her Recreational Membership on the Lot Number designated in Exhibit "A" to a Community Membership so long as said Owner provides written notification to the Board no later than thirty (30) days prior to the due date for annual fees for such membership. Change in membership status shall occur no more than once per calendar year.

(ii) Community Members. Each Person who is the record owner of a fee or undivided interest in any Lot, and whose Lot is submitted to Community Membership in the Association by execution hereof or by a Consent Form (as set forth above) recorded in the Cobb County, Georgia land records, shall be a Participating Member of the Association and shall be entitled to vote as set forth herein and in the Bylaws of the Association on any and all matters. Community Members shall not have any right to use or enjoy any of the Chestnut Springs pool and tennis

facilities. Community Members shall be entitled to use only the lake and clubhouse facilities. Participating Membership shall be appurtenant to and may not be separated from ownership of any such Member Lot.

An Owner listed on Exhibit "A" of this Declaration, may convert or change his or her Community Membership on the Lot Number designated in Exhibit "A" to a Recreational Membership so long as said Owner provides written notification to the Board no later than thirty (30) days prior to the due date for annual fees for such membership. Change in membership status shall occur no more than once per calendar year.

**UPON CONVEYANCE OR TRANSFER OF A LOT WHOSE CURRENT OWNER HAS EXECUTED THIS DECLARATION SUBJECTING SUCH OWNER'S LOT TO RECREATIONAL MEMBERSHIP OR COMMUNITY MEMBERSHIP (OTHER THAN A CONVEYANCE TO THE OWNER'S SPOUSE OR TO THE HEIRS OF THE OWNER UPON THE OWNER'S DEATH), SUCH LOT SHALL AUTOMATICALLY CONVERT TO RECREATIONAL MEMBERSHIP AND SHALL BE SUBJECT TO THE RIGHTS AND OBLIGATIONS OF FULL MEMBERSHIP WITHOUT THE ABILITY TO CONVERT OR CHANGE SAID RECREATIONAL MEMBERSHIP THEREAFTER.**

(b) General Provisions. All Occupants of Member Lots shall have all privileges to use the Common Property of the Association and shall be subject to all restrictions governing the Property and Common Property. Except as specifically provided in the Bylaws regarding rights of spouses of Members to vote and hold office, other residents who are not Members shall not have the right to vote or hold office.

The definition of Member is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate an Owner's membership. No Owner, whether one or more Persons, shall have more than one (1) membership per Lot owned. In the event of multiple Owners of a Member Lot, votes and rights of use and enjoyment shall be as provided in this Declaration and in the Bylaws. Any rights and privileges of membership, including the right to vote and to hold office, may be exercised by a Participating Member or the Participating Member's spouse, but in no event shall more than one (1) vote be cast nor office held for each Member Lot owned.

An Owner or Occupant of a Lot that is not a Recreational Member Lot shall not use any portion of the Chestnut Springs pool and tennis facilities, except by invitation of the Board of Directors or if they have purchased a yearly use pass.

(c) Voting. Participating Members shall be entitled to one (1) equal vote for each Member Lot owned. When more than one (1) Person holds an ownership interest in any Member Lot, the vote for such Member Lot shall be exercised as those Owners determine among themselves and advise the Secretary prior to any meeting. In the absence of such advice, the Member Lot's vote shall be suspended in the event more than one (1) Person seeks to exercise it. Recreational Members and Community Members shall be entitled to vote on any and all matters.

## 6. ASSOCIATION RIGHTS AND RESTRICTIONS.

The Association, acting through its Board of Directors, shall have the right and authority, in addition to and not in limitation of all other rights it may have:

(a) to make and to enforce reasonable rules and regulations governing the use of the Property, including the Member Lots and the Common Property;

(b) to enforce the provisions of this Declaration, Bylaws, and rules and regulations concerning the Common Property and to enforce the Protective Covenants for Chestnut Springs as shown on the Chestnut Springs Plats and as listed in the Original Declaration (in case of any conflict between this Declaration and the Original Declaration and the Plats, this Declaration shall control) by imposing reasonable monetary fines, suspending use and voting privileges of Recreational and Community Members (as provided herein and in Section 44-3-223 of the Act), suspending or revoking use and membership privileges of Non-Permanent Members, and using any other legal or equitable means, including self-help. As to all Participating Members and Lots, the Association shall be deemed substituted for the terms "Chestnut Springs" and "Architectural Control Committee" referenced in the Original Declaration. This Declaration shall be in addition and shall not be limited by the Original Declaration and Plats. These



powers, however, shall not limit any other legal means of enforcing the use restrictions or Association rules and regulations by either the Association or, in an appropriate case, by an aggrieved owner;

(c) to control, manage, operate, maintain, replace and, in the Board's discretion, improve all portions of the Common Property for which the Association is assigned maintenance responsibility under this Declaration;

(d) to determine, in its discretion, the terms of use of the Common Property by Non-Permanent Members;

(e) to grant permits, licenses, utility easements, and other easements, permits, public rights-of-way or licenses necessary for the proper maintenance or operation of the Common Property under, through, or over the Common Property, as may be reasonably necessary to or desirable for the ongoing development and operation of the Common Property;

(f) to deal with the Common Property in the event of damage or destruction as a result of casualty loss, condemnation or eminent domain, in accordance with the provisions of this Declaration;

(g) to represent the Members in dealing with governmental entities including the Common Property; and

(h) to acquire, hold and dispose of tangible and intangible personal property and real property.

#### 7. USE RESTRICTIONS.

Any covenants, conditions or restrictions, including, but not limited to those use restrictions which existed prior to the recording of this Declaration and the ability to enforce such restrictions, by any Person, shall not be altered, amended or affected by this Declaration as to Non-Participating Members who are Owners of Lots. All Persons entitled to enforce such restrictions shall be entitled to continue to do so. Additionally, all such covenants, conditions and restrictions shall be enforceable by the Association against any and all Participating Members. (In the event of any conflict between this Declaration and the Original Declaration or the Plats, this Declaration shall control.)

Each Participating Member shall be responsible for ensuring that the Owner's family, guests, tenants and Occupants comply with all provisions of this Declaration, the Bylaws and the rules and regulations of the Association. Furthermore, each Participating Member and Occupant of a Participating Member Lot shall always endeavor to observe and promote the cooperative purposes for which the Association was established. In addition to any rights the Association may have against the Participating Member's family, guests, tenants or Occupants, the Association may take action under this Declaration against the Participating Member as if the Participating Member committed the violation in conjunction with the Participating Member's family, guests, tenants or Occupants.

#### 8. ARCHITECTURAL CONTROL COMMITTEE.

Any architectural control covenants, conditions or restrictions, including, but not limited to those which existed prior to the recording of this Declaration and the ability to enforce such restrictions, by any Person, shall not be altered, amended or affected by this Declaration as to Non-Participating Members who are Owners of Lots. All Persons entitled to enforce such architectural controls shall be entitled to continue to do so. All such architectural control covenants, conditions and restrictions shall be enforceable by the Association Board of Directors and Architectural Control Committee ("ACC") against any and all Participating Members. (In the event of any conflict between this Declaration and the Original Declaration or the Plats, this Declaration shall control.)

#### 9. ASSESSMENTS.

(a) General. The Association shall have the power to levy assessments or dues against all Members as provided herein and in the Bylaws. The assessments for Common Expenses provided for herein shall be used for the general purposes of maintaining, repairing, replacing, insuring, managing, operating and, in the Board's discretion, improving the Common Property, otherwise operating the Property, enforcing this Declaration and other covenants upon the Property, paying for utility services serving the Common Property, maintaining a reserve fund for future Common Property maintenance, repairs or improvements, and promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Participating Members and Occupants of Member Lots in the Property and the

Participating Members, as may be more specifically authorized from time to time by the Board. Except as otherwise provided herein, all Lots in one category of Participating Membership are hereby allocated equal liability for Common Expenses as all other Lots in the same category, which need not be equal with that of the Lots in a different category of Permanent Membership or of Non-Permanent Members.

(b) Participating Members: Creation of the Lien and Personal Obligation For Assessments. Each Owner of a Participating Member Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments (dues) or charges; (ii) special assessments, such assessments to be established and collected as hereinafter provided; and (iii) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration.

All such assessments, together with charges, interest, costs, and reasonable attorney's fees actually incurred, in the maximum amount permitted under the Act, shall be a charge on such Participating Member Lot and shall be a continuing lien upon the Lot against which each assessment is made. Such amounts shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the assessment fell due. Each Owner of a Participating Member Lot and his or her grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors, which may include acceleration of any unpaid portion of any annual or special assessment for delinquent Participating Members upon ten (10) days written notice. If the Board authorizes payment of the annual assessment in installments, the Board may levy an additional charge on each installment, such amount not to exceed five percent (5%) of the amount of the installment payment.

The lien provided for herein shall have priority as set forth in the Act. The sale or transfer of any Member Lot pursuant to foreclosure of a first Mortgage shall extinguish the lien for assessments as to payments coming due prior to such sale or transfer. No sale or transfer shall relieve such Member Lot from liability for any assessments thereafter coming due or from the lien thereof. No Participating Member may exempt himself or herself from liability for or otherwise withhold payment of assessments for any reason whatsoever.

(c) Delinquent Assessments. All assessments and related charges not paid on or before the due date established by the Board shall be delinquent, and the Member shall be in default.

(i) If the annual assessments or any part or installment thereof is not paid in full within fifteen (15) days of the due date, a late charge equal to the greater of ten (\$10.00) dollars or ten (10%) percent of the amount not paid may be imposed without further notice or warning to the delinquent Member, and interest at the highest rate permitted under the Act (or the highest rate otherwise permitted under Georgia law for Non-Permanent Members) shall accrue from the due date.

(ii) For Participating Members, the Association, acting through the Board, must notify Participating Members in writing if any amount remains unpaid for more than thirty (30) days. After such notice has been sent to the delinquent Participating Member, the Association, acting through the Board, may suspend the Participating Member's right to use the Common Property if the amounts remain unpaid for more than sixty (60) days. The Association, acting through the Board, may also institute suit to collect all amounts due pursuant to the provisions of the Declaration, the Bylaws, and the Act, if the amounts remain unpaid for more than sixty (60) days.

(iii) For Non-Permanent Members, such membership becomes valid and effective only upon receipt by the Association of the full amount of any assessments or other charges due from such Non-Permanent Member. Should the full amount of any assessments or other charges due from a Non-Permanent Member, or any portion thereof, remain unpaid more than thirty (30) days, the Association may revoke and/or suspend such Owner's Non-Permanent Membership in the Association upon ten (10) days written notice.

(iv) If part payment of assessments and related charges is made, the amount received shall be applied first to costs and attorneys fees, as applicable, and then, in order, to late charges, interest, delinquent assessments, and current assessments.

(d) Computation of Operating Budget and Assessment.

(i) Community Member Assessment. The annual assessment for Community Members shall be established pursuant to a general budget created and adopted by the Board, covering the estimated costs of maintaining and operating the Common Property and otherwise operating the Property during the next fiscal year for which a general budget has not been adopted. The general budget shall include amounts to cover anticipated Common Expenses of operating, maintaining, repairing, improving and managing all of the Common Property, except the pool and tennis facilities, including insurance, legal, accounting and other professional fees, landscaping costs, and a reserve or capital contribution related to maintenance, repair, improvement and operation of the Common Property, except the pool and tennis facilities. The general budget shall reflect anticipated income to be received from Non-Permanent Members, and the Community Member assessment shall be determined from the general budget prepared by the Board.

Under no circumstances shall the Community Member annual assessment exceed thirty-three (33%) percent of the Recreational Member annual assessment. The annual assessment for Community Members for the year of 2002 shall be \$100.00 and said assessment shall be due and payable to the Association on or before April 1, 2002.

(ii) Recreational Member Assessment. The annual assessment for Recreational Members shall be established by adding the annual assessment for Community Members and an amount calculated pursuant to a recreation budget created and adopted by the Board, covering the estimated costs of maintaining and operating the pool and tennis facilities during the next fiscal year for which a recreation budget has not been adopted. The recreation budget shall include amounts to cover anticipated Common Expenses of operating, maintaining, repairing, improving and managing the pool and tennis facilities and a reserve or capital contribution related to maintenance, repair, improvement and operation of the pool and tennis facilities. The recreation budget shall reflect anticipated income to be received from Non-Permanent Members, and the Recreational Member assessment shall be determined from the recreation budget prepared by the Board plus the annual assessment for Community Members.

The annual assessment for Recreational Members for the year of 2002 shall be \$375.00 and said assessment shall be due and payable to the Association on or before April 1, 2002.

(iii) Notice and Approval of Budgets and Assessments. The Board shall cause the budgets and notices of the Community and Recreational assessments to be delivered to the respective Participating Members at least twenty-one (21) days prior to the Association's annual meeting or a specially called meeting. The budgets and the assessments shall become effective unless disapproved at such meeting by a vote of a majority of the total Association Participating Members; provided, however, if a quorum is not obtained at such meeting, the budgets and assessments shall become effective even though a vote to disapprove them could not be called at this meeting.

Notwithstanding the above, however, if the Participating Members disapprove the proposed budgets or the Board fails for any reason to determine the budgets for the succeeding year, then, until the budgets are determined as provided herein, the budgets in effective for the current year shall continue for the succeeding year, and the Board may propose new budgets at any time during the year by causing the proposed budgets and assessments to be delivered to the respective Participating Members at least thirty (30) days prior to the proposed effective date thereof. Unless a special meeting is requested by the Participating Members, as provided in the Bylaws for special meetings, the new budgets and assessments shall take effect without a meeting of the Participating Members.

(e) Initiation Fee. Subsequent to the Enrollment Period, the Board will require a non-refundable Initiation Fee in the amount of \$2,000.00 in order for the Owner of a Lot to become a Participating Member of the Association as a Recreational Member. No other membership type will be offered subsequent to the Enrollment Period. Any such Initiation Fee shall also include payment of the total annual assessments levied for Recreational Memberships for each year subsequent to the Effective Date of this Declaration. The new Participating Member also shall be responsible for the payment of any and all fees and expenses incurred by the Association in submitting the Owner's Lot to Participating Membership in the Association, including but not limited to all attorney's fees, recording fees and any related charges. Subsequent to the open Enrollment Period, Owners may join the Association pursuant to this provision as Recreational Members. If the Owner of a non-member Lot becomes a Recreational Member pursuant to this provision, the membership status of that Lot may not be changed to any other level, classification or category of membership.

(f) Special Assessments. In addition to the annual assessment provided for above, the Board may at any time levy a special assessment for any purpose against all Participating Members, notice of which shall be sent to all Participating Members; provided, however, prior to becoming effective, any special assessment first shall be approved by the affirmative vote of at least two-thirds (2/3) of eligible Participating Members entitled to vote thereon who are present or represented by proxy at a duly called meeting, notice of which shall specify that purpose, or by ballot specifying that purpose.

(g) Capital Budget and Reserve Contribution. As part of the annual general budget and recreation budget and assessments, the Board may fix and establish an annual reserve or capital contribution, in an amount sufficient to permit meeting the projected capital and future needs of the Association.

(h) Statement of Account. Any Participating Member, Mortgage holder, or a Person having executed a contract for the purchase of a Member Lot, or a lender considering a loan to be secured by a Member Lot, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments due and unpaid, including any late charges, interest or other charges against a Member Lot. The Association shall respond in writing within five (5) days of receipt of the request for a statement; provided, however, the Association may require the payment of a fee, not exceeding ten (\$10.00) dollars, or such higher amount as authorized by the Act, as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Lot as of the date specified therein.

(i) Specific Assessments. In the discretion of the Board, any Association Common Expenses occasioned by the conduct of less than all of those entitled to occupy all of the Member Lots or by the licensees or invitees of any such Member Lot(s), including but not limited to reasonable attorneys fees actually incurred by the Association, may be specially assessed against such Member Lot(s). Failure of the Board to exercise its authority under this Paragraph shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to exercise its authority under this Paragraph in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Paragraph.

#### 10. MAINTENANCE.

(a) Association's Responsibility. The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair, and replacement subject to any insurance then in effect, of all landscaping, grass areas, paving and other improvements situated on the Common Property. The Association shall have the right, but not the obligation, to maintain other property not owned by the Association where the Board has determined that such maintenance would benefit all Participating Members. The Association shall also maintain and keep in good repair all water and sewer pipes or facilities which serve the Common Property, to the extent that such pipes and facilities are not maintained by public, private, or municipal utility companies.

The foregoing maintenance shall be performed consistent with the Community-Wide Standard. The Association shall not be liable to any Participating Member, or any Participating Member's Occupant, tenant, guest or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Declaration where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities.

(b) Maintenance Standards and Interpretation. The maintenance standards and the enforcement thereof and the interpretation of maintenance obligations under this Declaration may vary from one term of the Board to another term of the Board. These variances shall not constitute a waiver by the Board of the right to adopt and enforce maintenance standards under this Paragraph. No decision or interpretation by the Board shall constitute a binding precedent with respect to subsequent decisions or interpretations of the Board.

#### 11. GENERAL PROVISIONS.

(a) Security. The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve safety on the Property; however, each Participating Member, for himself or herself and his or her Occupants, tenants, guests, licensees, and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security on the Property. It shall be the

responsibility of each Participating Member to protect his or her person and property and all responsibility to provide security shall lie solely with each Participating Member and/or Occupant. The Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

(b) Submission of Common Property. The Common Property of the Association shall be deemed submitted to this Declaration pursuant to execution of this Declaration by the Association.

(c) Indemnification. The Association shall indemnify every officer, director and committee member against any and all expenses, including, without limitation, attorney's fees, imposed upon or reasonably incurred by any officer, director or committee member 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 such officer, director or committee member may be a party by reason of being or having been an officer, director or committee member. The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers, directors or committee members may also be members of the Association), and the Association shall indemnify and forever hold each such officer, director and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director or committee member, or former officer, director or committee member, may be entitled. The Association shall maintain adequate general liability and officers', directors' and committee members' liability insurance to fund this obligation, if such coverage is reasonably available.

(d) No Discrimination. No action shall be taken by the Association or the Board of Directors which would unlawfully discriminate against any person on the basis of race, creed, color, national origin, religion, sex, familial status or handicap.

(e) Implied Rights. The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

## 12. AMENDMENTS.

Except where a higher vote is required for action under any other provisions of this Declaration, in which case such higher vote shall be necessary to amend such provision, this Declaration may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the Participating Members of the Association holding sixty-six and two-thirds (66-2/3%) percent of the total eligible vote thereof. Notice of a meeting, if any, at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. No amendment shall be effective until certified by the President and Secretary of the Association and recorded in the Cobb County, Georgia land records.

In addition to the above, material amendments to this Declaration must be approved by Eligible Mortgage Holders who represent at least fifty-one (51%) percent of the votes of Member Lots that are subject to Mortgages held by Eligible Mortgage Holders. Notwithstanding the above, the approval of any proposed amendment by an Eligible Mortgage Holder shall be deemed implied and consented to if the Eligible Mortgage Holder fails to submit a response to any written proposal for an amendment within thirty (30) days after the Eligible Mortgage Holder receives notice of the proposed amendment sent by certified or registered mail, return receipt requested.

Notwithstanding the foregoing, the Board of Directors, without the necessity of a vote from the owners, may amend this Declaration to comply with the Act, any applicable state, city or federal law, including but not limited to, compliance with applicable guidelines of the Federal National Mortgage Association ("Fannie Mae"), the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA").

Any action to challenge the validity of an amendment adopted under this Paragraph must be brought within one (1) year of the effective date of such amendment. No action to challenge such amendment may be brought after such time. The preambles to this Declaration are incorporated herein by this reference.

13. INSURANCE.

(a) The Association's Board or its duly authorized agent shall have the authority to and, if reasonably available, shall obtain insurance for all insurable improvements on the Common Property. This insurance shall include fire and extended coverage, including coverage for vandalism and malicious mischief and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

(b) The Board shall obtain a public liability policy applicable to the Common Property covering the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents in their capacities as such, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least One Million (\$1,000,000.00) Dollars.

(c) Premiums for all insurance obtained by the Association shall be a Common Expense of the Association. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

(d) All such insurance coverage obtained by the Board shall be written in the name of the Association, as trustee, for the benefit of the Association and its members.

(e) The Board, in its reasonable discretion, also may maintain as a Common Expense a fidelity bond or similar coverage on directors, officers, employees or other Persons handling or responsible for the Association's funds, in an amount determined in the Board's business judgment.

14. REPAIR AND RECONSTRUCTION.

In the event of damage to or destruction of all or any part of the Common Property as a result of fire or other casualty, unless eighty (80%) percent of the Participating Members vote not to proceed with the reconstruction and repair of the structure, the Board or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the structure. In the event of substantial damage or destruction, Eligible Mortgage Holders on a Member Lot shall be entitled to written notice of the damage.

(a) Cost Estimates. Immediately after a fire or other casualty causing damage to the Common Property, the Board shall obtain reliable and detailed estimates of the cost of repairing and restoring the structures thereon to substantially the condition which existed before such casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Such costs may also include professional fees and premiums for such bonds as the Board determines to be necessary.

(b) Source and Allocation of Proceeds. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair, as determined by the Board, or if at any time during the reconstruction and repair or upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, a special assessment shall be made against all of the Participating Members with a vote of the Participating Members in compliance with Paragraph 8(f) above. If after repair and reconstruction is completed there is a surplus of funds, such funds shall be common funds of the Association to be used as directed by the Board.

(c) Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the plans and specifications under which the Common Property was originally constructed, except where changes are necessary to comply with current applicable building codes.

(d) Construction Fund. The net proceeds of the insurance collected on account of a casualty and the funds collected by the Association from assessments against Participating Members on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair in the manner set forth in this Paragraph to be disbursed by the Association in appropriate progress payments to such

contractor(s), supplier(s), and personnel performing the work or supplying materials or services for the repair and reconstruction of the buildings as are designated by the Board.

15. SEVERABILITY.

Invalidation of any one of these covenants or restrictions by judgment or court order or otherwise shall in no way affect the application of such provision to other circumstances or affect any other provision(s), which shall remain in full force and effect.

16. DURATION.

The covenants and restrictions of this Declaration shall run with and bind the Property perpetually to the extent provided in the Act.

17. PREPARER.

This Declaration was prepared by Ellen J. Fleming, Weissman, Nowack, Curry & Wilco, P.C., Two Midtown Plaza, 15th Floor, 1349 West Peachtree Street, Atlanta, Georgia 30309.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Board of Directors and undersigned Owners of Lots as set forth below have approved recording of this Declaration of Protective Covenants and Mandatory Membership for Chestnut Springs and the signature pages to follow:

**CHESTNUT SPRINGS HOMEOWNERS ASSOCIATION, INC.**

By: \_\_\_\_\_  
Its President

Attest: \_\_\_\_\_  
Its Secretary

[CORPORATE SEAL]

Signed, sealed, and delivered this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Witness

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

My Commission Expires: \_\_\_\_\_

[NOTARY SEAL]



[Additional signatory to Declaration]

The undersigned Owner(s) is/are the record Owner and holder of title in fee simple to a Lot within the Chestnut Springs Subdivision in Cobb County, Georgia, located at the address described below, and more particularly shown as Lot \_\_\_\_, as located in Land Lot \_\_\_\_, 16th District, 2nd Section and as shown on the plat of survey for Chestnut Springs Subdivision, Unit \_\_\_\_ recorded in Plat Book \_\_\_\_, Page \_\_\_\_, Cobb County, Georgia records such plat being incorporated herein by this reference ("Owner's Property") and Owner desires to execute this Declaration and submit Owner's Property to the Declaration as a:

(CHECK ONE)

RECREATIONAL MEMBER

COMMUNITY MEMBER

as such terms are defined in the Declaration. Owner(s) also consent to amendment and restatement of the Bylaws of the Chestnut Springs Homeowners' Association, Inc.

Signed, sealed and delivered this  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature of Owner

\_\_\_\_\_  
Print or Type Full Name of Owner

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Notary Public  
[NOTARY SEAL]

\_\_\_\_\_  
Street Address  
  
\_\_\_\_\_

Signed, sealed and delivered  
this \_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_.

\_\_\_\_\_  
Signature of Co-Owner

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print or Type Full Name of Co-Owner

\_\_\_\_\_  
Notary Public  
[NOTARY SEAL]

EXHIBIT "B"  
MODEL CONSENT FORM

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Return to: Weissman, Nowack, Curry & Wilco, P.C.  
1349 West Peachtree Street  
Two Midtown Plaza - 15<sup>th</sup> Floor  
Atlanta, GA 30309  
Attn: Ellen J. Fleming, Esq.

STATE OF GEORGIA Index in Grantor Index Owner's Name(s): \_\_\_\_\_

COUNTY OF COBB Index in Grantor and Grantee Index Also Under:  
Chestnut Springs Homeowners' Association, Inc.

Cross Reference to Owner's Deed: Deed Book \_\_\_\_\_  
Page \_\_\_\_\_

Cross Reference to Chestnut Springs Declarations: Deed Book 2414  
Page 433  
Deed Book 2636  
Page 201  
Deed Book 2734  
Page 156

Cross Reference to  
Declaration of Protective  
Covenants and Mandatory Membership  
for Chestnut Springs: Deed Book \_\_\_\_\_  
Page \_\_\_\_\_

CONSENT FORM TO THE DECLARATION OF PROTECTIVE COVENANTS AND MANDATORY  
MEMBERSHIP FOR CHESTNUT SPRINGS

WHEREAS, the undersigned owner(s) (hereinafter referred to as "Owner") is the record owner and holder of title in fee simple to a Lot as defined in the Declaration of Protective Covenants and Mandatory Membership for Chestnut Springs in Cobb County, Georgia ("Declaration"), located at the address described below, and more particularly shown as Lot \_\_\_\_, as located in Land Lot \_\_\_\_, 16<sup>th</sup> District, 2<sup>nd</sup> Section, as shown on the plat of survey for Chestnut Springs Subdivision, Unit \_\_\_\_ recorded in Plat Book \_\_\_\_, Page \_\_\_\_, Cobb County, Georgia records (hereinafter "Owner's Property") such plat being incorporated herein by this reference; and

WHEREAS, Owner desires to submit Owner's Property to the Declaration as a **RECREATIONAL MEMBER OR COMMUNITY MEMBER (CIRCLE ONE)** of the Association, as defined in the Declaration;

NOW, THEREFORE, Owner does hereby consent, on behalf of Owner, Owner's successors, successors-in-title, heirs, and assigns, that from and after the date of this Consent, Owner's Property shall be owned, held, transferred, sold, conveyed, used, occupied, mortgaged, or otherwise encumbered subject to all of the terms, provisions, covenants, and restrictions contained in the Declaration, as a Participating Member of the Association, all of which shall run with the title to Owner's Property and shall be binding upon all persons having any right, title, or interest in Owner's Property, their respective heirs, legal representatives, successors, successors-in-title, and assigns. Owner understands and acknowledges that, by submitting Owner's Property to **RECREATIONAL MEMBER OR COMMUNITY MEMBER (CIRCLE ONE)** (as defined in the Declaration) in the Association, Owner is hereby subjecting Owner's Property to mandatory assessments in favor of the Association, with lien rights afforded therefor, in accordance with the Declaration.

Owner does further consent to the submission of the Common Property (as defined in the Declaration) to the Declaration.

Signed, sealed and delivered  
this \_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_.

\_\_\_\_\_  
Signature of Owner

\_\_\_\_\_  
Print or Type Full Name of Owner(s)

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Signature of Co-Owner

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

\_\_\_\_\_  
Street Address

[NOTARY SEAL]

---

**THIS PORTION TO BE COMPLETED BY ASSOCIATION UPON RETURN FROM OWNERS:**

**Approved by:**

**Signed, sealed, and delivered**  
**this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.**

**CHESTNUT SPRINGS HOMEOWNERS' ASSOCIATION, INC.**

\_\_\_\_\_  
**Witness**

**By:** \_\_\_\_\_  
**Its: President**

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

[CORPORATE SEAL]

[NOTARY SEAL]

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**EXHIBIT "C"**

**[Description of Common Property]**

**EXHIBIT "D"**

**[Bylaws]**