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GEORGIA, CHEROKEE COUNTY, CLERK SUPERIOR COURT
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1987 at 4:30 P.M. Recorded in Book 680
Page 297 this 18 day of Dec 1987
Ornette Fleming

BOOK 680 PAGE 297
(10)

DECLARATION OF EASEMENTS AND COVENANTS TO SHARE COSTS

THIS DECLARATION is executed this 9th day of December, 1987, by West Mill Joint Venture, a Texas joint venture, composed of L.D.J. Development Co., a Texas corporation, and LDJ Construction Co., a Texas corporation ("Declarant");

BACKGROUND STATEMENT

Declarant is the owner (or, if not the owner, Declarant has obtained the written consent of the owner(s) to this Declaration) of all that property which is subject to that certain Master Declaration of Protective Covenants for Towne Lake Residential Area recorded or to be recorded contemporaneously herewith in the Cherokee County, Georgia land records (such declaration is referred to herein as the "Master Residential Declaration" and such property, together with the property that may from time to time be subjected to the Master Residential Declaration is herein referred to as the "Residential Property"). Declarant is also the owner (or if not the owner, Declarant has obtained the written consent of the owner(s) to this Declaration) of all that property which is subject to that certain Declaration of Protective Covenants for Towne Lake Commercial Area recorded or to be recorded contemporaneously herewith in the Cherokee County, Georgia land records (such Declaration is herein referred to as the "Commercial Declaration," and such property, together with the property that may from time to time be subjected to the Commercial Declaration, is herein referred to as the "Commercial Property"). Declarant desires to provide for maintenance of certain property benefitting both the Residential Property and the Commercial Property, as is more fully described herein, and for an equitable allocation of the costs of such maintenance between Towne Lake Residential Association, Inc. ("Residential Association") and Towne Lake Commercial Owners Association, Inc. ("Commercial Association"). Declarant also desires to provide an easement for access by the Commercial Association over and through the Residential Property to the extent necessary to perform its maintenance responsibilities hereunder.

NOW, THEREFORE, Declarant hereby declares that all of the Residential Property and all of the Commercial Property, (hereinafter collectively referred to as the "Properties") shall be held, sold and conveyed subject to the easements,

See Amend Prop Cov. Bk 6119 pg 34

restrictions, covenants and conditions contained herein, which shall run with the title to the real property submitted to this Declaration and shall bind 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 of any part thereof.

Article I
Easement

Subject to the provisions of this Declaration, Declarant does hereby grant and convey to the Residential Association, its officers, directors, employees, agents and designees, a non-exclusive easement appurtenant to the Residential Property over the Commercial Property for the purpose of maintaining, repairing and replacing the Maintenance Property (as defined below) in accordance with this Declaration.

THE CONTINUED EXISTENCE OF THIS EASEMENT IS EXPRESSLY MADE SUBJECT TO THE CONDITIONS AND RESTRICTIONS CONTAINED HEREIN WHICH SHALL CONSTITUTE COVENANTS RUNNING WITH THE TITLE TO, AND BOTH BENEFITTING AND BURDENING, THE COMMERCIAL PROPERTY AND THE RESIDENTIAL PROPERTY.

Article II
Maintenance and Repair

Section 1. Maintenance Responsibility. The Residential Association shall maintain, repair, preserve, replace, protect, and operate the Maintenance Property in accordance with the standards established in the Residential Declaration. The Maintenance Property shall specifically include: (i) all grass, landscaping and structures which comprise a part of any entry features for the Properties (except that entry features for any Parcel, as defined in the Master Residential Declaration, located within the Properties shall not be Maintenance Property); (ii) street signage and street lights along Towne Lake Parkway, Rose Creek Drive ^{RM} and ^{RM} ~~and~~ ^{and} (iii) grass and other landscaping of medians and rights-of-way along Towne Lake Parkway, Rose Creek Drive ^{RM} and ^{RM} ~~and~~ ^{and} and (iv) such other property as may be designated by Declarant as Maintenance Property in an amendment to this Declaration or an amendment subjecting property to the Commercial Declaration or the Master Residential Declaration. This maintenance responsibility shall include, but shall not be limited to, year-round maintenance of living plants in any area requiring landscaping; replacement of dead plants within a reasonable period of time after they die; cleaning, sweeping and picking up debris on the Maintenance

Property; and maintenance, repair and replacement of street lights, street signage and entry features; all in accordance with the Community-Wide Standard established pursuant to the Master Residential Declaration and the Commercial Declaration.

Section 2. Insurance. The Residential Association shall insure against claims for bodily injury and property damage occurring on or about the Maintenance Property in accordance with the standards for insurance established in the Master Residential Declaration. Such insurance shall name the Commercial Association as an additional insured.

Section 3. Remedy Upon Failure to Maintain. The Commercial Association shall have the right to bring suit at law or in equity to enforce the obligations of the Residential Association under this Declaration.

Article III
Obligation To Share Costs

Section 1. Responsibility for Assessments. The Commercial Association shall pay to the Residential Association an annual assessment to cover a portion of the costs, including insurance, incurred by the Residential Association in performing its obligations under Article II of this Declaration. The obligation to pay this assessment shall be mandatory, whether or not the Commercial Association agrees with or is satisfied with the manner and extent of performance by the Residential Association, the Commercial Association's sole remedy being that provided in Article II, Section 3 above.

Section 2. Computation of Assessments. On an annual basis, the Residential Association shall determine an estimated budget for performing its maintenance obligations under this Declaration during the upcoming year, including an appropriate amount to be placed in a reserve fund for capital repairs and replacements. Such budget shall be adjusted to reflect any excess or deficiency in the budget assessed for the immediately preceding year, as compared to actual expenses for that period. The Commercial Association's share of such budget shall be determined by the following formula:

$$\frac{\text{Total Acreage Of Commercial Property} \times 5}{(\text{Total Acreage of Commercial Property} \times 5) + (\text{Total Acreage of Residential Property})} \times \text{Budget} = \text{Commercial Assessment}$$

For purposes of this formula, the total acreage of the Residential Property and the total acreage of the Commercial Property shall be determined as of the date the budget is adopted. The Residential Association may not, without the consent of declarant (so long as any declarant owns any property primarily for development and/or sale in the Residential Property or Commercial Property or subject to annexation by such declarant to the Master Residential Declaration or Commercial Declaration) and the vote or written consent of at least a majority of the Commercial Association vote entitled to vote thereon, impose an annual assessment on the Commercial Association which is more than one hundred ten (110%) percent of the annual assessment for the immediately preceding fiscal year.

Section 3. Payment of Assessments. Within thirty (30) days of receipt of notice of an annual assessment, the Commercial Association shall pay to the Residential Association the entire amount due. Any assessment delinquent for a period of more than thirty (30) days shall incur a late charge in such amount as the Residential Association may from time to time determine to be reasonable. If the assessment is not paid when due, a lien, as herein provided, shall attach to the Common Property (as defined in the Commercial Declaration) of the Commercial Association and, in addition, the lien shall include the late charge, interest (at the maximum lawful rate) on the principal amount due and all late charges from the date first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid after ninety (90) days, the Residential Association may institute suit to collect such amounts and to foreclose its lien. The lien provided for in this Article shall be in favor of the Residential Association and shall be for the benefit of all its members. The Residential Association, acting through its board of directors and on behalf of its members, shall have the power to bid at any foreclosure sale or to acquire, hold, lease, mortgage, or convey foreclosed property.

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

Article IV
General

Section 1. Notice. Any notice provided for in this Declaration shall be served personally or shall be mailed by registered or certified mail to the president or secretary of

the Commercial Association or the Residential Association, respectively. All such notices shall, for all purposes, be deemed delivered (a) upon personal delivery to the president or secretary of the respective association; or (b) on the third (3rd) day after mailing when mailed by registered or certified mail, postage prepaid, and properly addressed.

Section 2. Recordkeeping. The Residential Association shall maintain or cause to be maintained full and accurate books of account with respect to its management, maintenance, and operation of the properties described in Article II. Such books and records and financial statements related thereto shall be available for inspection and copying by the Commercial Association, upon request, during normal business hours or under other reasonable circumstances. Copying charges shall be paid by the Commercial Association. Within a reasonable time after the end of each fiscal year, the records, including all supporting materials (e.g., check copies, invoices, etc.), for the year ended, shall be made available to the Commercial Association. If the Commercial Association desires to have the records audited, it may do so at its own expense, and the Residential Association shall cooperate with the party performing the audit. If the amount of actual expenses for the preceding year is disputed after audit, the Commercial Association and the Residential Association shall cause a second audit to be performed by a mutually acceptable auditor and the decision of the second auditor shall be binding. If the amount as determined by the second auditor varies from the amount asserted by the Residential Association by more than fifteen (15%) percent of the amount asserted, then the Residential Association shall pay the entire cost of the second auditor. If the amount as determined by the second auditor varies from the amount asserted by the Residential Association by less than five (5%) percent of the amount asserted, then the Commercial Association shall pay the entire cost of the second auditor. Otherwise, the cost of the second auditor shall be shared equally by both associations.

Section 3. Indemnification. The Residential Association shall indemnify and hold harmless the Commercial Association, its officers, directors, employees and agents against and from all claims, demands, actions, and rights of action against the Commercial Association which shall or may arise by virtue of anything done or omitted to be done by the Residential Association (through or by agents, employees or other representatives) outside the scope of, or in breach of the terms of, this Declaration, provided that the Residential Association shall be promptly notified of the existence of the claim, demand, action or right of action and shall be given reasonable opportunity to participate in the defense thereof.

Section 4. Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any portion of the Properties subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any portion of the Properties subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on any portion of the Properties subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any owner's property unless any such owner shall consent thereto in writing. Further, so long as the declarant(s) of the Master Residential Declaration or Commercial Declaration, or either of them, has an option unilaterally to subject additional property to either of those instruments as provided in those instruments, such declarant(s) may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially and adversely affect the substantive rights of any owner or occupant hereunder, nor shall it adversely affect title to the property of any owner without the consent of the affected owner.

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of at least a majority of the directors of the Residential Association and a majority of the directors of the Commercial Association and, so long as the declarant(s) of the Master Residential Declaration or Commercial Declaration, or either of them, has an option unilaterally to subject additional property to either of those instruments as provided in those instruments, the consent of such declarant(s). Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified therein.

Any procedural challenge to an amendment must be made within six (6) months of its recordation. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

Section 5. Duration. The provisions of this Declaration shall run with and bind the land and shall be and remain in effect for a period of twenty (20) years after the

date that this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless such extension is disapproved by at least a majority of the directors of the Residential Association and a majority of the directors of the Commercial Association, and, so long as the declarant(s) of the Residential Declaration and the Commercial Declaration, or either of them, has an option unilaterally to subject additional property to either of those instruments as provided in those instruments, the consent of such declarant(s). Every purchaser or grantee of any interest in any real property subject to the Master Residential Declaration or the Commercial Declaration, by acceptance of a deed or other conveyance therefor, agrees that such provisions of this Declaration may be extended and renewed as provided in this Section.

Section 6. Binding Effect. This Declaration shall be binding upon and shall inure to the benefit of every owner of any portion of the Properties.

Section 7. Interpretation. This Declaration shall be governed by and construed under the laws of the State of Georgia.

Section 8. Compliance With Governmental Authority. Every owner of any portion of the Properties agrees to comply with all laws, ordinances, statutes, rules and regulations of any governmental authority relating to the use, condition, or maintenance of the property described in Article II, and in the event that any expense is required to affect such compliance, such expense shall be considered a general maintenance expense for which the cost shall be shared on the same basis as provided in Article III.

Section 9. Waiver. No failure of the Commercial Association or the Residential Association to exercise any power given the Commercial Association or the Residential Association hereunder or to insist upon strict compliance by the other with its obligations hereunder and no custom or practice at variance with the terms hereof shall constitute a waiver of the right to demand exact compliance with the terms hereof.

Section 10. Preparer. This Declaration was prepared by Hyatt & Rhoads, P.C., 2400 Marquis One Tower, 245 Peachtree Center Avenue, N.E., Atlanta, Georgia 30303.

Section 11. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall

continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

Section 12. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

Section 13. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

Section 14. Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

The undersigned, being the duly appointed officers of Declarant herein, have executed this Declaration and affixed the corporate seal as of the date first above written.

DECLARANT: WEST MILL JOINT VENTURE, a Texas joint venture

By: L.D.J. DEVELOPMENT CO., a Texas corporation venturer

By: [Signature] [SEAL]

Title: DAVID J. BOURG, Vice Pres.

Attest: [Signature] [SEAL]

Title: Richard L. Rose, Assistant Secretary

Signed, sealed, and delivered this 9th day of December, 1987, in the presence of:

[Signature]
WITNESS

[Signature]
NOTARY PUBLIC
My Commission Expires: _____
Notary Public, Cherokee County, Georgia
My Commission Expires Sept. 30, 1991

[CORPORATE SEAL]



By: LDJ CONSTRUCTION CO., a Texas corporation, venturer

By: [Signature] [SEAL]

Title: VICE PRESIDENT

Attest: [Signature] [SEAL]

Title: ASSISTANT SECRETARY

Signed, sealed, and delivered this 9th day of December, 1987, in the presence of:

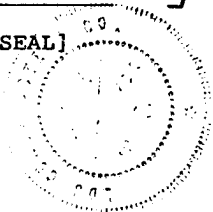
[Signature]
WITNESS

[Signature]
NOTARY PUBLIC

My Commission Expires: _____

Notary Public, Cherokee County, Georgia
My Commission Expires Sept. 30, 1991

[CORPORATE SEAL]



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ANNETTE FLEMING
Clerk, Superior Court of Cherokee County