

Return to:  
Jarrard & Davis, LLP  
105 Pilgrim Village Drive  
Suite 200  
Cumming, Georgia 30040

## DECLARATION OF RESTRICTIVE COVENANTS

STATE OF GEORGIA  
COUNTY OF FORSYTH

**THIS DECLARATION OF RESTRICTIVE COVENANTS** made and published this \_\_\_\_ day of \_\_\_\_\_ 2011, by Lanier Golf Club, Inc. as “Declarant,” and consented to by Bank of North Georgia (“Bank”).

### WITNESSETH:

**WHEREAS**, Declarant is the owner of property described in Exhibit “A,” attached hereto and incorporated herein by reference (hereinafter said property shall be referred to as the “Property”);

**WHEREAS**, Declarant desires to subject the Rear Acreage, as defined herein, of the Property to the provisions and restrictions of this Declaration;

**WHEREAS**, Bank holds a security deed on the entirety of the Property, which security deed is recorded in the real property records of the Clerk of Superior Court of Forsyth County, Georgia at Deed Book 4411, Page 428 (the “Security Deed”); and

**WHEREAS**, the Property that is the subject of this Restrictive Covenant is the subject of the civil lawsuit, *Wellstone v. Forsyth County*, Forsyth County Superior Court, Civil Action, 2007 CV 2213, (the “Suit”) wherein an Order was issued May 12, 2011 declaring that the existing A1 zoning designation on the Property is unconstitutional, and directing Forsyth County to rezone the Property to a constitutional zoning within forty-five (45) days of entry; and

**WHEREAS**, the parties anticipate that the County may, in the exercise of its legislative discretion, rezone the front ninety-three (93) acres of the Property, as shown on Exhibit “A” from A1 to an MPD with a CCRC and a conditional use permit and that the rear seventy nine (79) acres of the Property, as shown on Exhibit “A” will be rezoned Res3 (both zonings to be collectively referred to as “the Zoning”) – but that the Declarant will donate approximately one-hundred ten (110) acres of the rear portion of the Property (the “Rear Acreage”) to the County upon the sale or development of approximately 65 acres of the Property adjacent to Buford Dam Road (the “Front Acreage”), subject to certain stipulations and restrictions. The Front Acreage and rear Acreage are generally depicted on the map attached hereto as Exhibit “B,” and the parties hereto acknowledge and agree

that the specific boundaries of the Front Acreage and Rear Acreage may be slightly modified due to surveying and topography.

**NOW, THEREFORE,** for and in consideration of the premises and of the benefits and advantages to be derived by Declarant, the County and the Bank, Declarant hereby declares and the Bank hereby consents that:

### **1. COVENANTS AND RESTRICTIONS.**

The Rear Acreage shall be neither zoned nor developed (except necessary maintenance and golf related development), and that the Declarant shall be obligated to immediately donate the Rear Acreage to the County upon any of the following occurring;

- Sale, lease or conveyance (except via condemnation) of the Front Acreage;
- Sale, lease or conveyance (except via condemnation or conveyance to the County) of the Rear Acreage;
- Any attempt at development of the Front Acreage by any party; and,
- Any attempt at development of the Rear Acreage by any party.

The Declarant shall have the right to perform necessary maintenance and golf course-related development without triggering the donation requirement.

The above obligations, prohibitions and restrictions on the Property shall be deemed by the parties hereto as legally enforceable covenants, conditions, and restrictions (sometimes referred to herein collectively as “covenants” and/or “restrictions”), which are for the purpose of protecting the value and desirability of the Property and the adjacent properties and the Bank’s interest in the Property, and said covenants, restrictions and conditions shall run with the land hereby and shall be binding in perpetuity upon and inure to the benefit of the County and all persons having any right, title, or interest to any lot or portion of the Rear Acreage, their respective heirs, legal representatives, successors, and assigns.

Any effort by the Declarant to take any action inconsistent with the terms of this Restrictive Covenant shall be deemed a breach and shall give rise to a cause of action in favor of Forsyth County for strict enforcement of the terms hereunder.

Upon conveyance of the Rear Acreage to the County in fee simple absolute, this Restrictive Covenant shall expire on its own terms.

### **2. ENFORCEMENT.**

These covenants and restrictions shall be enforceable against the Declarant by the County, the Bank, or both.

### **3. SEVERABILITY.**

Invalidation of any of the covenants or restrictions contained in this Declaration by judgment or court order shall in no way affect any other provisions hereof, and all other provisions shall remain in full force and effect.

**4. AMENDMENTS.**

These Restrictions may not be amended or modified without the express written permission of both the County and the Bank.

**5. CONFLICT AMONG COVENANTS.**

In the event of a conflict among the provisions of this Declaration, the more restrictive provision(s) shall control.

**6. CONSENT OF BANK.**

Bank hereby consents to, agrees to, confirms and ratifies the encumbrance on its rights under the Security Deed contained in this Declaration, and Bank hereby subordinates all of its rights and interests described in the Security Deed to the covenants and restrictions contained in this Declaration, such that subsequent to execution of this Restrictive Covenant, in the event of foreclosure or other adverse action taken by the Bank respective to the Property, the terms of this Restrictive Covenant shall endure and control and the Parties hereto agree that the Declarant's obligations, restrictions and prohibitions set forth in paragraph one (1) shall prevail completely against any claim of superior interest based upon the Security Deed.

**IN WITNESS WHEREOF**, the undersigned on behalf of Declarant have hereunto set their hands and seals the day and year above written.

**LANIER GOLF CLUB, INC.**

Signed, sealed and delivered  
in the presence of:

BY:

\_\_\_\_\_  
Witness

\_\_\_\_\_

\_\_\_\_\_  
Notary Public  
My Commission expires:

ATTEST: \_\_\_\_\_

[AFFIX CORPORATE SEAL]

**BANK OF NORTH GEORGIA**

BY:

Signed, sealed and delivered

in the presence of:

\_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Notary Public  
My Commission expires:

ATTEST: \_\_\_\_\_

[AFFIX CORPORATE SEAL]

**FORSYTH COUNTY, GEORGIA**

Signed, sealed and delivered  
in the presence of:

BY:

\_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Notary Public  
My Commission expires: