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Please return recorded instrument to:
Stephen A. Winter, Esq.
Weinstock & Scavo, P.C.
3405 Piedmont Road, N.E., Suite 300
Atlanta, Georgia 30305

STATE OF GEORGIA
COUNTY OF GWINNETT
Reference:
Deed Book: 6613, Page 176

FIFTH AMENDMENT TO THE DECLARATION OF COVENANTS
AND EASEMENTS FOR HUNTINGTON WEST

This Fifth Amendment to the Declaration of Covenants and Easements [for Huntington West](hereinafter, "Amendment"), is made this 27 day of April, 2005, by Huntington West Homeowners' Association, Inc., a Georgia nonprofit corporation (hereinafter referred to as the "Association"), in accordance with the provisions of said Declaration.

WITNESSETH

WHEREAS, on or about June 28, 1991, Land Star Corporation (hereinafter referred to as the "Declarant") caused that certain Declaration of Covenants and Easements [for Huntington West] to be recorded at Deed Book 6613, Page 176, Gwinnett County, Georgia records ("Declaration"); and

WHEREAS, such Declaration previously has been amended by that certain Amendment to the Declaration of Covenants and Easements for Huntington West Homeowners Association, recorded on November 30, 1991 at Deed Book 6889, page 161 of the Gwinnett County, Georgia records and by that certain Second Amendment to Declaration of Covenants and Easements for Huntington West Subdivision, recorded on November 22, 1991 at Deed Book 6904, Page 88 of the Gwinnett County Georgia records and by that certain Amendment to Declaration of Covenants and Easements for Huntington West Homeowner's Association, recorded on February 3, 1998 at Deed Book 15394, Page 235 of the Gwinnett County Georgia records and by that certain Amendment to Declaration of Covenants and Easements for Huntington West Subdivision, recorded on December 22, 1998 at Deed Book 19771, Page 89 of the Gwinnett County Georgia records (hereinafter, collectively, the "Declaration"); and

WHEREAS, the Association, as referenced under the Declaration, and the membership thereof has determined that it is in the best interest of the Association to amend the Declaration for the purposes as herein stated; and

WHEREAS, the Association and the members thereof desire to amend the Declaration to provide for a limitation on the number of Lots that may be leased at any one time within the Property; and

WHEREAS, pursuant to Article VII, Section 7.03 of the Declaration, the Declaration may be amended upon the affirmative approval of Owners holding at least two-thirds (2/3) of the total votes in the Association; provided, however, (i) that any amendment which materially alters and adversely affects the security title and interest of any mortgage must be approved by such mortgagee and (ii) during any period in which the Declarant has the right to appoint and remove officers and directors of the Association, such amendment must be approved by Declarant; and

WHEREAS, this amendment does not materially alters and adversely affect the security title and interest of any mortgage; and

WHEREAS, Declarant no longer has the right to appoint and remove officers and directors of the Association; and

WHEREAS, the following Amendment has been approved by the Owners holding at least two-thirds (2/3) of the total votes in the Association as evidenced by the Certification of Approval attached hereto as Exhibit "A" and incorporated herein through this reference;

NOW, THEREFORE, the Declaration of Covenants and Easements [for Huntington West] is hereby amended as follows:

1. By adding a new Section 5.05 of Article V of the Declaration which shall read as follows:

5.05 Architectural Control Committee.

(a) Review by Committee. To preserve the architectural appearance of the Property, no exterior construction, alteration, addition, or erection of any nature whatsoever shall be commenced or placed upon any part of the Property, except such is approved in accordance with this Section, or as is otherwise expressly permitted herein. No exterior construction, addition, erection, or alteration shall be made unless and until plans and specifications showing at least the nature, kind, shape, height, materials, and location shall have been submitted in writing to and approved by the Board of Directors or an appointed Architectural Control Committee ("ACC"). If the Board does not appoint a separate ACC, the Board shall comprise all members of the ACC. Any application to the Board of Directors or an appointed architectural committee shall be in writing and shall provide such information as the Board of Directors may reasonably require. The Board of Directors, or its designated architectural committee, shall have the right to adopt reasonable architectural standards with respect to construction, additions or alterations as to any portion of the Property which standards may provide for a review fee and the same shall be enforceable as if set forth herein. The Board may employ architects, engineers, or other persons as it deems necessary to enable the ACC to perform its review. The ACC may, from time to time, delegate any of its rights or responsibilities hereunder to one or more duly licensed architects or other qualified persons which shall have full authority to act on behalf of the committee for all matters delegated. The Board shall appoint the members of the ACC, which shall be comprised of at least five (5) representatives. A majority vote of the ACC is required for approval or disapproval of submitted plans and specifications.

If the ACC fails to approve or to disapprove submitted plans and specifications within forty-five (45) days after the plans and specifications have been submitted to it, the foregoing will be deemed approved. However, all activities commenced pursuant to plans which have been deemed approved shall be consistent with such plans.

As a condition of approval under this Section, each Owner, on behalf of such Owner and such Owner's successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance to and on any change, modification, addition, or alteration as such responsibilities are set forth in

this Declaration. In the discretion of the ACC, an Owner may be made to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of such Owner and such Owner's successors-in-interest. The ACC shall be the sole arbiter of such plans and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. Any member of the Board, the ACC or their representatives shall have the right, after reasonable written notice, to enter upon any property to inspect for the purposes of ascertaining whether or not these restrictive covenants have been or are being complied with. Such written notice shall identify the Board or ACC member or members or the representative or representatives who are to conduct the inspection, and shall confirm a time for such inspection, which time shall have been agreed upon by the Owner and the Board or ACC. In the event a time for inspection cannot be agreed upon by the Owner and the Board or ACC within ten (10) days from the date of initial contact with the Owner, any member of the Board, the ACC or their representatives shall have the right to conduct the inspection without the Owner's consent following reasonable written notice, which shall notify the Owner of the scheduled inspection. Any member of the Board, the ACC or their representatives shall not be deemed guilty of trespass by reason of such entry.

Plans and specifications are not approved for engineering or structural design, quality of materials or code compliance and by approving such plans and specifications neither the ACC, the members thereof, nor the Association assumes liability or responsibility therefor, nor for any defect in any structure constructed from such plans and specifications. Neither the Association, the ACC, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable for damages to anyone submitting plans and specifications to any of them for approval, or to any Owner of property affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications and every Owner agrees that such person or Owner will not bring any action or suit against the Association, the ACC, the Board, or the officers, directors, members, employees, and agents of any of them to recover any damages and hereby releases, remises, quitclaims, and covenants not to sue for all claims, demands, and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given.

(b) Appeal Process. In the event proposed plans, details and specifications are disapproved by the ACC, an Owner may request a hearing by forwarding a written explanation of the basis of the appeal and requesting a hearing by the ACC. The ACC shall evaluate the written request and determine if there is sufficient reason for a hearing. The ACC's decision will be forwarded to the Owner in writing. In the event an Owner is not satisfied with the results of the appeal to the ACC, the Owner may appeal to the Board of Directors using the same written procedure as above. The Board shall be required to hear the Owner's appeal, and must consult with the ACC prior to making its decision. The Board's decision will be forwarded to the Owner in writing and shall be final. In the event an Owner is not satisfied with the results of the appeal to the Board, the Owner shall have the right to pursue an action in law or equity.

(c) No Waiver. Each Owner acknowledges that the members of the Board and the ACC will change from time to time and that interpretation, application and enforcement of the architectural standards may vary accordingly. The approval of either the Board or the ACC of any proposals, plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval of the Board or the ACC shall not constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans, and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

2. By adding a new Section 6.06 of Article VI of the Declaration which shall read as follows:

6.06 Additional Enforcement Rights. In addition to the Association's other enforcement rights as provided herein, the Board may impose fines for any violation of this Declaration, the Bylaws of the Association or any rules and regulations of the Association, which fines shall be collected as provided herein for the collection of assessments.

3. By deleting Section 7.01 of Article VII of the Declaration in its entirety and replacing such Section with a new Section 7.01 which shall read as follows:

7.01 Duration. The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent provided by law; provided, however, so long as Georgia law limits the period during which covenants restricting land to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land so long as permitted by such law and any such duration shall be subject to the renewal and termination provisions of O.C.G.A. § 44-5-60, as now existing or as may hereafter be amended. Every purchaser or grantee of any interest (including, without limitation, a security interest) in any real property subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that such provisions of this Declaration may be extended and renewed as provided in this Section.

4. By deleting Section 7.03(a) of Article VII of the Declaration in its entirety and replacing such Section with a new Section 7.03(a) which shall read as follows:

(a) This Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of at least two-thirds (2/3) of the total Owners; provided, however, that any amendment which materially and adversely affects the security title and interest of any mortgage must be approved by such mortgagee. Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified therein.

5. By deleting Section 7.03(b) of Article VII of the Declaration in its entirety and replacing such Section with a new Section 7.03(b) which shall read as follows:

(b) This Section is intentionally left blank.

6. By adding a new Article X of the Declaration entitled "Leasing of Lots" which shall read as follows:

ARTICLE X

Leasing of Lots.

10.01 Definition. "Leasing," for purposes of this Declaration, is defined as regular occupancy of a Lot by any person other than the Owner, with or without a written lease agreement, for which the Owner, any relative of the Owner or any other agent of the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument.

10.02 Prohibition on Leasing. In order (1) to carry out the purposes for which the Property was formed by preserving the character of the Property as a homogeneous residential community of predominately owner-occupied residences and by preventing the residences from assuming the character of an apartment, renter-occupied complex, (2) to assist in compliance with the eligibility requirements for financing in the secondary mortgage market, and (3) for other purposes, leasing of Lots in the Property shall be limited to five percent (5%) of the total number of Lots located in the Property, except in the case of undue hardship, as defined

in Section 10.04 below, and in the case of a roommate situation where an Owner occupying a Lot desires to lease his Lot to one (1) other individual, provided the Owner continues to reside in and occupy the Lot throughout the duration of the lease

10.03 Waiting List. If the leasing of Lots shall ever reach the maximum percentage allowed pursuant to this Amendment (5%), then any additional Owner who intends to lease their Lot must give thirty (30) days written notice to the Board of Directors of such intention. Those Owners shall then be placed on a waiting list to lease their Lots in the same priority as such notices were received by the Board of Directors. Upon the expiration of any lease at the Property then existing, the Lot Owner with the highest priority on the waiting list shall then be notified of his/her entitlement to lease his/her Lot upon the conditions and terms hereof. If a proposed lease cannot be submitted to the Board within fifteen (15) days from said date, then the next Lot Owner with the next highest priority shall be permitted to lease his/her Lot. This process shall continue until the waiting list has been exhausted. If a Lot cannot be leased after the exhaustion of all Owners on the waiting list, then the Owner whose lease expired causing the opening shall be permitted to re-lease. Upon the notification by the Owner with priority on the waiting list of their intention to lease his/her Lot and upon the submission of the proposed lease to the Board of Directors of the Association, the Association shall then have the duty to notify the lessor of the then expired lease of his necessity to have his/her lessee vacate the premises.

10.04 Undue Hardship. Notwithstanding the foregoing, the Board of Directors, in their discretion, shall be empowered to allow reasonable leasing of Lots beyond the five percent (5%) limitation, notwithstanding such limitation, upon written application, to avoid undue hardship upon an Owner, including, but not limited to, those instances (1) where an Owner must relocate his or her residence and cannot, within one hundred twenty (120) days from the date that the Lot was placed on the market, sell the Lot for the current fair market value (as may be determined by an appraiser or any other person approved by the Board and paid for by the Owner), after having made reasonable efforts to do so; (2) where the Owner dies and the Lot is being administered by his or her estate; (3) the Owner temporarily relocates outside the metropolitan Atlanta area and intends to return to reside on the Lot and (4) the Lot is to be leased to a member of the Owner's family, related by blood, adoption or marriage. Those Owners who are required to demonstrate and who have demonstrated that the inability to lease their Lot would result in undue hardship and have obtained the requisite approval of the Board may lease their Lots for such duration as the Board reasonably determines is necessary to prevent undue hardship. In the event the Board permits an Owner to lease a Lot for a stated period of time in order to prevent undue hardship, such Owner shall immediately discontinue leasing of his or her Lot at the end of such period of time unless the Board renews or extends permission to lease.

Any Owner who believes that he or she must lease his or her Lot to avoid undue hardship shall submit a written application to the Board at least fifteen (15) days in advance of the proposed commencement of such lease term, setting forth the circumstances necessitating the leasing, the name of the proposed lessee, a copy of the proposed lease, and such other information as the Board may reasonably require. Leasing in the case of undue hardship shall only be permitted upon the Board's written approval of the Owner's application, and there shall be no occupancy by any lessee until such approval by the Board is granted. However, failure of the Board to approve or disapprove such written application to allow for leasing due to undue hardship within twenty (20) days from the date of its submission shall automatically deem such application approved by the Board. This Section 10.04 does not apply to those Owners who lease their Lot or any portion thereof to one (1) other individual while continuing to reside in and occupy their Lot throughout the duration of the lease as provided in Section 10.02 above.

The Board shall have the power to make and enforce reasonable rules and regulations and to fine, in accordance with the Declaration and By-Laws, in order to enforce the provisions of this Article X. Any transaction which does not comply with the provisions of this Article shall be void unless subsequently approved by the Board of Directors in writing.

10.05 Leasing Provisions. Such leasing as is permitted by this section of the Declaration shall be governed by the following provisions:

(a) General. Lots may be leased only in their entirety; no fraction or portion may be leased, provided, however, that an Owner may lease their Lot or any portion thereof to one (1) other individual while continuing to reside in and occupy their Lot throughout the duration of the lease as provided in Section 10.02 above. There shall be no subleasing of Lots or assignment of leases. No transient tenants may be accommodated in a Lot. All leases shall be in writing. Except as may otherwise be permitted by the Board, all leases must be for a minimum term of one (1) year. The Owner must make available to the tenant copies of the Declaration, By-Laws, and the Rules and Regulations.

(b) Liability for Fines and Other Charges and Compliance with Declaration, By-Laws, and Rules and Regulations. Any lease of a Lot at the Property shall be deemed to contain the following provisions, whether or not expressly therein stated, and each Owner covenants and agrees that any lease of a Lot shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into a lease by the existence of this covenant. Any lessee, by occupancy of a Lot, agrees to the applicability of this covenant and incorporation of the following language into any lease:

(i) Liability for Fines and Other Charges. Lessee agrees to be personally obligated for the payment of all fines and other charges which become due as a consequence of Lessee's activities, including, but not limited to, activities which violate provisions of the Declaration, the By-Laws, or the Rules and Regulations adopted pursuant thereto. The above provision shall not be construed to personally obligate the Lessee for assessments levied against the Owner for annual assessments, special assessments or specific assessments and shall not be construed to release the Owner from any obligation, including the obligation for assessments or any other charges assessed against the Owner's Lessees for which he or she would otherwise be responsible.

Upon the failure of an Owner to pay any assessments, fines or other charges due to the Association hereunder, Lessee shall, upon request by the Association, pay to the Association all rents and other charges payable to Lessor under the Lease. All such payments made by Lessee to the Association shall reduce, by the same amount, Lessee's obligation to make monthly rental payments to Lessor. It shall be the responsibility of the Association and not of the Lessee to account to the Lessor for funds actually received by the Association from the Lessee.

(ii) Compliance With Declaration, By-Laws, and Rules and Regulations. Lessee agrees to abide and comply with all provisions of the Declaration, By-Laws, and Rules and Regulations adopted pursuant thereto. Owner agrees to cause all Occupants of his or her Lot to comply with the Declaration, By-Laws, and Rules and Regulations adopted pursuant thereto and is responsible for all violations and losses caused by such Occupants, notwithstanding the fact that such Occupants of the Lot are fully liable and may be sanctioned for any violation of the Declaration, By-Laws, or a Rule or Regulation for which a fine is imposed. Such fine shall be assessed against the Lessee; provided, however, if the fine is not paid by the Lessee within the time period set by the Board of Directors, the Owner shall pay the fine upon notice from the Association of the Lessee's failure to pay the fine. Unpaid fines constitute a lien against the Lot. Any Lessee charged with a violation of the Declaration, By-Laws, or Rules and Regulations adopted pursuant thereto is entitled to the same procedure to which an Owner is entitled prior to the imposition of a fine or other sanction.

Any violation of the Declaration, By-Laws, or Rules and Regulations adopted pursuant thereto is deemed to be a violation of the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the Lessee in accordance with Georgia law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the Lessee for breaches resulting from the violation of the Declaration, By-Laws, and the Rules and Regulations adopted pursuant thereto, including the power and authority to evict the Lessee on behalf and for the benefit of the Owner, in accordance with the terms hereof. In the event the Association proceeds to evict the tenant, any costs, including attorney's fees and court costs, associated with the eviction shall be specially assessed against the Owner thereof, such being deemed hereby as an expense which benefits the leased Lot and the Owner thereof.

(iii) Association as Third Party Beneficiary. The Association is a third

party beneficiary of the terms of each Lease between an Owner and a Lessee.

10.06 **Notice.** All Owners leasing their Lots must give thirty (30) days-written notice to the Board of their intention to lease, along with a copy of the proposed lease, and all such leasing and leases shall be subject to approval by the Association in order to assure compliance with the provisions of the Declaration, By-Laws and Rules and Regulations. Leasing shall only be permitted upon written approval of the Owner's application, and there shall be no occupancy by any lessee until such approval is granted. All notices shall be in writing and shall contain such information as may reasonably be required by the Association. Failure to provide notice as required herein shall constitute disapproval thereof. The Board's review of the proposed lease and approval or disapproval thereof shall be based upon (1) compliance of the proposed lease and lessee with the Declaration, By-Laws and Rules and Regulations of the Association, (2) submission of the lease notice provided for herein inclusive of all required information, and (3) submission of a copy of a signed lease. The failure of the Board to approve or disapprove such written application to allow for leasing within twenty (20) days from the date of its submission shall automatically deem such application approved by the Board. Any lease which is not authorized pursuant to the terms of this Article X shall be void.

10.07 **Applicability.** Leases existing on the recording date of this Amendment shall not be subject to the terms of this Amendment. Such leases may continue in accordance with the terms of the Declaration as it existed prior to the recording date of this Amendment. However, any assignment, extension, renewal, or modification of any such lease agreement including, but not limited to, changes in the terms or duration of occupancy, shall be considered a termination of the old lease and a commencement of a new lease which must comply with the provisions of this Amendment. All Owners who are currently leasing shall file copies of their leases with the Board of Directors within thirty (30) days of the date on which this Amendment is recorded in the Gwinnett County, Georgia Records.

This Article X shall not apply to any leasing transaction entered into by the holder of any mortgage on a Lot who becomes the Owner of a Lot through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such mortgage. All costs and expenses incurred by the Association, including reasonable attorneys' fees, as a result of the action taken to enforce the Declaration, the Bylaws or the rules and regulations of the Association shall be deemed part of the assessments due by such Owner of a Lot and shall be collected as provided herein for the collection of assessments.

7. By execution below the Association confirms and ratifies the subjection of all Lots within the Property to the terms and conditions of the Declaration. Further, in accordance with that certain Amendment to the Declaration of Covenants and Easements for Huntington West Homeowners' Association, Inc., recorded February 2, 1998 at Deed Book 15394, Page 235, Gwinnett County, Georgia records ("1998 Amendment"), all Owners of Lots who took title to their Lot after the date of recordation of the 1998 Amendment, have become and shall be an automatic Full Member (as defined below) in the Association and shall enjoy all such rights, privileges and benefits and be subject to all such obligations, including but not limited to those obligations specified in Article IV of the Declaration, as the same are granted to Owners and Members herein. Such Owners shall remain Full Members until their respective Lot is transferred of record to a new Owner who shall then automatically become a Full Member in accordance with the provisions hereof.

The Association shall have the following two (2) classes of membership in the Association: (1) Full Members; and (2) Junior Members. Full Members shall pay to the Association annual assessments as provided in Article IV of the Declaration and shall receive all Member privileges as established by the Declaration and Board of Directors of the Association. Junior Members shall be assessed a portion of the annual assessment and shall receive such Junior Member privileges and obligations as are established by the Board of Directors of the Association. Owners taking title to their Lot prior to the recording of the 1998 Amendment may, at the option of such Owner, become a Full Member or Junior Member.

8. Except as herein modified and amended, the Declaration shall remain in full force and effect; provided, however, any conflicts between this Amendment and any other prior amendment to the Declaration or

any recorded plat for the Property shall be resolved in favor of this Amendment. This Amendment shall be effective upon its filing for record in the Public Records of Gwinnett County, Georgia and shall be binding upon and inure to the benefit of all Owners of Lots in the Property and their respective heirs, executors, administrators, legal representatives, successors and assigns.

9. This Amendment was prepared by Stephen A. Winter, Esq. of Weinstock & Scavo, P.C., 3405 Piedmont Road, N.E., Suite 300, Atlanta, Georgia 30328.

(Signatures are continued on the next page)

EXHIBIT "A"

CERTIFICATION OF APPROVAL

The undersigned officers of Huntington West Homeowners' Association, Inc. hereby swear under oath that the above Amendment to Declaration was duly adopted by the agreement of the required percentage of the Lot Owners and that any notices required by the Declaration were properly given.

Dated this 27th day of APRIL, 2005.

Sworn to and subscribed before me this
27th day of APRIL, 2004.

Cynthia C. Donoho

Notary Public

My Commission Expires:

By: Rick Heffner
Rick Heffner, President

By: Susan Powell
Susan Powell, Secretary

[NOTARY SEAL]

CYNTHIA C DONOHO
Notary Public, Gwinnett County, Georgia
My Commission Expires April 30, 2005

IN WITNESS WHEREOF, the undersigned officers of Huntington West Homeowners' Association, Inc. hereby execute this Amendment on the date and year first above written.

HUNTINGTON WEST HOMEOWNERS' ASSOCIATION, INC., a Georgia non-profit corporation

By: *Rick Heffner*
Rick Heffner, President

Attest: *Susan Powell*
Susan Powell, Secretary

[SEAL]

Signed, sealed and delivered on this
27th day of APRIL, 2005
in the presence of:

Sarah C. Donoho
Unofficial Witness

Cynthia C. Donoho
Notary Public

My Commission Expires: **CYNTHIA C DONOHO**
~~Notary Public, Gwinnett County, Georgia~~
My Commission Expires April 30, 2005

[NOTARY SEAL]