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**DECLARATION OF
COVENANTS, RESTRICTIONS AND EASEMENTS
FOR
STONECREST AT JOHNS CREEK
FORSYTH COUNTY, GEORGIA**

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**DECLARATION OF
COVENANTS, RESTRICTIONS AND EASEMENTS
FOR STONECREST AT JOHNS CREEK
FORSYTH COUNTY, GEORGIA**

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS is made by AMBURGY PROPERTIES CANEY, LLC, a Georgia Limited Liability Company (hereinafter the "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner, or has the consent of the owner, of all that tract or parcel of land lying and being in Land Lot 1061 of the 2nd Land District, 2nd Section, Forsyth County, Georgia, as shown on the legal description attached hereto as Exhibit "A" and incorporated herein by reference (said property, together with any other real property that is hereafter submitted to the provisions of this Declaration, less and except any portions thereof that have been or may be dedicated to Forsyth County, Georgia or any municipality or other government entity, and less and except any real property withdrawn from the provisions of this Declaration in accordance with the terms and conditions contained herein, being herein referred to as the "Property"); and

WHEREAS, Declarant intends to impose on the Property mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Property and to establish a procedure for the overall development, administration, maintenance and preservation of the Property; and

WHEREAS, in furtherance of such plan, it is desirable to create an Association to own, operate, maintain and/or manage, as applicable, the Area of Common Responsibility (as defined below) and to administer and enforce the covenants and restrictions and design guidelines imposed hereby; and

WHEREAS, it is intended that every owner of any of the Lots automatically, and by reason of such ownership in this Declaration, become a Member of the Association and be subject to its rules and regulations and the assessments and charges made by the Association;

NOW THEREFORE, Declarant does hereby submit the Property to the provisions of this Declaration. This document establishes a mandatory membership homeowners association, but does not and is not intended to submit the Property to the provisions of the Georgia Property Owners' Association Act, O.C.G.A. § 44-3-220, *et seq.*

**ARTICLE I.
DEFINITIONS**

As used in this Declaration, the following terms shall have the meanings ascribed to them in this Article, such definitions being cumulative of those set forth in the recitals and elsewhere in this Declaration.

"Additional Property" shall mean any and all real property lying and being within five (5) miles of the Property.

"Annual Assessment" shall have the meaning specified in the Article entitled "ASSESSMENTS", and shall constitute the assessments which, pursuant to the provisions of such Article, shall be levied by the Association against the Lots each year for the purpose of raising the funds necessary to pay the "Annual Expenses" (as that term is defined in such Article).

"Architectural Control Committee" or **"ACC"** shall mean those individuals appointed to have jurisdiction over construction on or within any portion of the Property and responsibility for administration of design guidelines, as more fully described in the Article entitled "Architectural Control."

"Area of Common Responsibility" shall mean the Common Areas, together with those areas, if any, which

by the terms of this Declaration or by contract or agreement with any other Person become the responsibility of the Association, including but not limited to any agreement with any municipality or other government entity for the maintenance and upkeep of the covered bridge adjacent to the Property.

"Articles of Incorporation" shall mean the Articles of Incorporation of the Association, as the same may be amended from time to time.

"Association" shall mean StoneCrest at Johns Creek Homeowners Association, Inc., a Georgia non-profit corporation, its successors and assigns.

"Back Buffer" shall mean, with respect to any Lot, that portion of the Common Areas that is located directly behind and adjacent to such Lot's rear boundary line and that would be a part of such Lot if such Lot's side boundary lines were to be extended in a straight line past the Lot's rear boundary line all the way to the boundary of the Property and shall also mean, with respect to Lots 13 and 14, that portion of the Common Areas that is located directly adjacent to such Lot's side boundary line and that would be a part of such Lot if the joint boundary line shared by Lot 13 and Lot 14 were to be extended in a straight line through the Common Areas all the way to the boundary of the Property.

"Board of Directors" shall mean the body responsible for the administration of the Association, as provided in the Bylaws.

"Builder" shall mean any Person who purchases one (1) or more Lots for the purpose of constructing improvements for later sale to consumers or who purchases one (1) or more parcels of land within the Property for further subdivision, development and/or resale in the ordinary course of such Person's business. Any Person occupying or leasing an Improved Lot for residential purposes shall cease to be considered a Builder with respect to such Improved Lot on the date of such occupancy of the Improved Lot for residential purposes, notwithstanding that such Person originally purchased the Lot for the purpose of constructing improvements for later sale to consumers.

"Bylaws" shall mean the Bylaws of the Association, as the same may be amended from time to time.

"Common Areas" shall mean, singularly or collectively, as applicable, all land, improvements and other properties, which hereafter shall be deeded to, or acquired by, the Association for the common use and enjoyment of the Owners.

"Community Wide Standards" shall mean the standard of conduct, maintenance or other activity generally prevailing throughout the Property. Such standard shall initially be established by the Declarant and may be more specifically determined by the Architectural Control Committee. The Community Wide Standards may, but are not required to be, promulgated in writing.

"County Clerk" shall mean the Clerk of the Superior Court of the county where the Property is located.

"Declarant" shall mean Amburgy Properties Caney, LLC, a Georgia Limited Liability Company, and shall include any successor or assign who shall acquire any portion of the Property for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant; provided, however, that there shall be only one "Declarant" hereunder at any one time.

"Declaration" shall mean this Declaration of Covenants, Restrictions and Easements for StoneCrest at Johns Creek, as the same may be hereafter amended in accordance with the terms hereof.

"Development Period" shall mean the period of time during which the Declarant owns any property that is subject to this Declaration or has the unilateral right to subject Additional Property to this Declaration pursuant to Article II. The Declarant may, but shall not be obligated to, unilaterally relinquish its rights under this Declaration and terminate the Development Period by recording a written instrument with the County Clerk.

"Improved Lot" shall mean a Lot (i) upon which there is located a structure for which a certificate of occupancy has been issued by the applicable governmental authority, (ii) which has been sold to a Person who is not the Declarant or a Builder, and (iii) is not being used as a Model Home.

"Lot" shall mean each portion of the Property which may be independently owned and conveyed and which is intended for development, use, and occupancy as a detached residence for a single family, as shown and indicated as a "Lot" on any Plat hereafter recorded.

"Member" shall mean a Person subject to membership in the Association pursuant to the Article entitled "The Association".

"Model Home" shall mean a structure used by the Declarant or a Builder to show a prospective buyer what a similar housing type will look like when constructed on a Lot.

"Mortgage" shall mean a deed or other document by means of which title to any Lot is conveyed or encumbered to secure a debt of first priority. The term **"Mortgagee"** shall refer to a beneficiary or holder of a Mortgage.

"Owner" shall mean any Person who is a record owner by purchase, transfer, assignment or foreclosure of a fee or undivided fee interest in a Lot; provided, however, that any Person who holds such interest merely as security for the performance of an obligation shall not be an Owner.

"Person" shall mean a natural person, corporation, trust, partnership or any other legal entity.

"Plat" shall mean, collectively, all plats for any portion of the Property that are recorded in the Superior Court of Forsyth County, Georgia, together with all amendments thereto, and any and all other plats, and amendments thereto, that are hereafter recorded in the County Clerk's plat book records for the purpose of subjecting any of the Additional Property to this Declaration.

"Property" shall have the meaning given to it in the first recital paragraph of this Declaration.

"Recreation Agreements" shall mean those agreements between StoneCrest Home Owners Association, Inc. and/or Amburgy Properties Caney, LLC, Brookwood Lake Homeowners Association, Inc. and Glenmoor Forsyth Homeowners Association, Inc. which approve the Members herein use of the recreational facilities at Brookwood Lake Subdivision. Said Recreation Agreements include, but are not limited to an Agreement between Amburgy Homes Caney, LLC, StoneCrest Homeowners Association, Inc., Brookwood Lake Homeowners Association, Inc., Glenmoor Forsyth Homeowners Association, Inc., as well as a Second Amendment to the Declaration of Covenants, Conditions and Restriction for Brookwood Lake to be recorded in the Forsyth County Superior Court records and a Second Amendment to the Bylaws of Brookwood Lake Homeowner Association, Inc.

"Recreation Member" shall mean the Owner's mandatory membership in the right to use all recreational facilities at Brookwood Lake Subdivision; said recreation membership shall not be separated from ownership in a Lot.

"Supplemental Declaration" shall mean an instrument filed with the County Clerk which imposes additional restrictions and/or obligations on the land described in such instrument.

ARTICLE II. PROPERTY SUBMITTED TO THIS DECLARATION

Section 1. Lots Hereby Subjected to this Declaration. The Declarant, for itself and its successors and assigns, does hereby submit the Property and the Lots to this Declaration. The Property shall hereafter be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration, including, but not

limited to, the lien provisions set forth herein. All of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration as applicable to the Lots shall be a permanent charge thereon, and shall run with the Lots.

Section 2. All Lots Bear the Burdens and Enjoy the Benefits of this Declaration. Every Owner, by taking record title to a Lot, agrees to all of the terms and provisions of this Declaration. Each of the Lots is subject to all the burdens, and enjoys all the benefits, made applicable hereunder.

Section 3. Annexation of Additional Property. The Declarant may, at any time, and from time to time, prior to ten (10) years from the date hereof, subject all or part of the Additional Property to the terms, provisions, liens, charges, easements, covenants and restrictions of this Declaration by executing and recording with the County Clerk an amendment to this Declaration describing the property being annexed. Declarant further has the right to convey to the Association additional Common Areas contained within such Additional Property, the maintenance of which may increase the amount of the Annual Assessment as provided elsewhere herein and may increase the amount of Annual Assessments which shall be levied against each Lot. No approval from any Member of the Association, or from anyone else whomsoever, shall be required for the Declarant to subject Additional Property to this Declaration.

From and after such recording, the annexed property shall be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, liens, charges, easements, covenants and restrictions of this Declaration, including, without limitation, all lien and assessment provisions set forth in this Declaration, and all of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration shall be a permanent charge on, and shall run with, such annexed property.

In addition to the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration, Declarant shall further have the right at its election, without the consent of any Owner or Owners, to subject any such annexed property to additional controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens by filing a Supplemental Declaration with the County Clerk covering only such annexed property. The Association shall have the right and authority to enforce all controls, covenants, conditions, restrictions, easements and development guidelines contained in such additional declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the annexed property in order to reflect the different character and intended use of such property.

Section 4. Withdrawal of Property. The Declarant reserves the right to amend this Declaration during the Development Period, for the purpose of removing any portion of the Property from the coverage of this Declaration, provided such withdrawal is not contrary to the overall, uniform scheme of development for the Property and is not contrary to the planned residential development requirements of the zoning ordinance in effect for the Property. This provision includes but is not limited to Declarant's right to convey property to any governmental entity, conservation or land trust as deemed desirable in Declarant's discretion. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if same is not the Declarant. If the property is part of the Common Areas, the Association shall also consent to the withdrawal.

Section 5. Submission to a Master Community and Other Acts of Declarant. Declarant reserves the right to amend this Declaration during the Development Period to submit the Property and the Additional Property to a larger planned community, to subject the Property to a master association and to consolidate the Association with other homeowners or community associations.

ARTICLE III. ASSOCIATION PROPERTY

Section 1. Common Areas and Association Property. The Declarant shall have the right to transfer and convey to the Association, or cause the transfer and conveyance to the Association, any portion of the Property. All portions of the Property which are so transferred or conveyed to the Association shall thereafter constitute Common

Areas. Said right may be exercised by the Declarant any time, and from time to time, prior to ten (10) years from the date hereof. Common Areas shall be conveyed to the Association subject to the rights and easements set forth in this Article, irrespective of whether the deed of conveyance shall make a specific reference to such rights and easements.

Section 2. Member's Rights in Association Property. Every Owner of every Lot shall have a non-exclusive right and easement of enjoyment and use in and to the Common Areas and such right and easement shall be appurtenant to, and shall pass with, the title to the Lot(s) owned by such Owner. The right and easement of enjoyment and use of the Common Areas are and shall be subject to the easements which are described in the Article entitled "Easements Over the Property", to the right of the Association to promulgate reasonable rules and regulations regarding the use of Common Areas, and the right of the Association, as provided in the Bylaws, to suspend the enjoyment rights of the Owner(s) of any Lot during any period in which any assessment which is due to the Association from such Owner remains unpaid, and for such period as the Board of Directors may consider appropriate for any infraction of its rules and regulations. No such suspension, however, shall prohibit the Owner of any Lot from using the Common Areas to the extent necessary for such Owner to have access to and from his Lot.

The Board of Directors may permit other persons who are not residents of any Lots to use the Common Areas upon such terms and conditions, and for the payment of such fees, as shall be determined by the Board of Directors.

Section 3. No Partition. The Common Areas shall remain undivided and no Owner shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the Property and without the written consent of all holders of all Mortgages encumbering any portion of the Property.

Section 4. Condemnation. In the event that any part of the Common Areas shall be taken by any authority having the power of condemnation or eminent domain or conveyed in lieu of, and under threat of, condemnation by the Board of Directors acting on the written direction of the Owners of at least sixty seven percent (67%) of the Lots (and, if during the Development Period, the written consent of Declarant), the Association shall restore or replace the improvements on the remaining land included in the Common Areas to the extent available or possible unless, within sixty (60) days after such taking, the Owners of at least sixty seven percent (67%) of the Lots (and Declarant, if during the Development Period) otherwise agree. The provisions of the subsection immediately below regarding funds for the repair of damage or destruction shall apply. If the taking or conveyance does not involve any improvements on the Common Areas, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds may be used by the Association for such purposes as the Board of Directors shall determine.

Section 5. Damage or Destruction. In the event that any improvements located on any Common Areas shall be damaged or destroyed by any casualty, the Board of Directors shall proceed with the filing and settlement of all claims arising under any policy of insurance maintained by the Association with respect to such improvements and shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed improvements.

Any such damage or destruction shall be repaired or reconstructed unless it shall be decided, within ninety (90) days after the occurrence of casualty, by the Owners of at least sixty seven percent (67%) of the Lots, and by Declarant, if during the Development Period, not to so repair or reconstruct such damage. In the event that it shall be so decided not to repair or reconstruct some damage or destruction, the proceeds of any insurance as may become payable to the Association as a result of such damage or destruction shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot. If the insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Members, levy special assessments to cover the shortfall.

Section 6. Permitted Actions. Notwithstanding anything to the contrary in this Article, the Association, acting through the Board of Directors, may dedicate portions of the Common Areas to any local, state or federal

governmental or quasi-governmental entity and may grant easements over the Common Areas for installation and maintenance of utilities and drainage facilities and for other purposes not inconsistent with the intended use of the Common Areas, all without the approval of the membership.

Section 7. Reconveyance of Common Areas. Notwithstanding anything contained herein to the contrary, Declarant reserves the right to re-plat any Lot still owned by Declarant in order to modify the boundary lines and to take such other steps reasonably necessary or desirable to make such re-platted Lot suitable for its intended use, including but not limited to, the relocation of easements, walkways, rights-of-ways, roads, bridges, parks, recreational facilities, and other amenities to conform to the new boundaries of such re-platted Lots. Upon request of Declarant, the Association shall reconvey to Declarant any unimproved portions of the Property originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make adjustments to property lines to meet set-back requirements or for any other reason.

ARTICLE IV. EASEMENTS OVER THE PROPERTY

Section 1. Easements and Agreements Regarding Association Property. The Property is subject to all easements and agreements of record including the Recreation Agreements as herein defined. The Property shall further be subject to, and Declarant and the Association do hereby grant, the following easements:

(a) Easements Shown on Plat. The Property shall be subject to all easements, dedications, borders, buffers, restrictions and the like which are shown and depicted on the Plat as affecting and burdening the Property.

(b) Use of Common Areas. Declarant hereby reserves an easement for the exclusive use of such portions of the Common Areas as may be reasonably desirable, convenient or incidental to the construction and installation of improvements on, and the sale of, any Lots, including, but not limited to, sales and business offices, storage areas, construction yards and signs. Such easements shall be exercisable by Declarant and any and all persons who the Declarant shall authorize to exercise the same, including, without limitation, real estate sales agents and brokers, Builders, and their subcontractors of residences upon the Lots, irrespective of whether such persons are affiliated with the Declarant. Such easements shall exist notwithstanding any provision of this Declaration which might be construed to the contrary, but shall terminate one (1) year and thirty (30) days after the date that all of the Lots are Improved Lots. Such easements shall and do exist without affecting the obligation of the Owner of any Lot to pay assessments or charges coming due during such period of time as portions of the Common Areas shall be used by authorized persons pursuant to the exercise of the easements herein stated.

(c) Declarant Activities. Notwithstanding any provision contained in this Declaration, the Bylaws or the Articles of Incorporation to the contrary, or any amendments thereto, until the expiration of the Development Period, it shall be expressly permissible for Declarant, and any Person authorized by Declarant, to maintain and carry on, upon such portion of the Property as Declarant may deem necessary, such facilities and activities as may reasonably be required by Declarant or any Builder for the development, construction and sale of the Property, including but without limitation, the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the Property; the right to tie into any portion of the Property with driveways, parking areas and walkways; the right to tie into and/or maintain and repair any device (without a tap-on or any other fee for doing so), replace, relocate, maintain, and repair any device which provides utility or similar service including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under, or over the Property; the right to carry on sales and promotional activities on the Property, including the right to keep gates open during sales office hours; and the right to construct and operate business offices, signs, construction trailers, and Model Homes; and the right to exercise all rights reserved to Declarant in this Declaration.

Section 2. Easements Over All Lots. The Lots shall be subject to, and the Declarant does hereby grant, the following non-exclusive perpetual and temporary easements for the enjoyment of Declarant, the Association, any Builders and subcontractors authorized by Declarant, the Members, the Owners, and the successors-in-title of each:

(a) Easements Shown on Plat. Each Lot shall be subject to all easements, borders, buffers, restrictions and the like which are shown and depicted on the Plat as affecting and burdening such Lot.

(b) Entrance Features. There shall be a perpetual easement in favor of the Association for maintenance, repair and landscaping of the entrance monuments and entrance landscaping which are or will be located on the Property and the repair and replacement of any water pipes and electrical lines which are a part thereof. The Owners of any Lots on which these features are placed, or against which such features abut, shall not remove, camouflage, damage or otherwise alter in any way said entrance features.

(c) Entry. Each Lot shall be subject to an easement for the entry by the authorized agents and representatives of the Association to go upon such Lot under such circumstances and for such purposes as are described elsewhere in this Declaration

(d) Encroachments. Each Lot shall have a three (3) foot easement as measured from any point on the common boundary between such Lot and any adjoining Lot, or between such Lot and adjacent Common Areas, for driveway, HVAC, fence or other encroachments which may be erected in said easement area, unless such encroachment was due to the willful act of an Owner or the Association.

(e) Private Streets. All Lots shall be subject to a perpetual easement in favor of the Association for maintenance, management, repair and landscaping of the private street located on the Property, as shown on the Plat. This easement right includes the right of contractors engaged by the Association to enter upon any and all Lots from time to time as necessary in order to perform any of the above repair or maintenance work. The Owners of the Lots shall not impair access to, or otherwise alter in any way, said streets, alleys or landscaping.

(f) Slope Control. Each Lot shall be subject to an easement for slope control purposes, including the right to grade and plant slopes and prevent the doing of any activity that might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow.

(g) Surface Water Drainage. Each Lot shall be subject to a perpetual easement in favor of the Association and all other Lots for the drainage of surface waters over, under or across such Lot, including any runoff or carry over of water from one Lot to another, if and to the extent that such cross Lot drainage condition was created by Declarant or by a Builder authorized by Declarant. All Lots on which storm sewer lines are located are further subject to a perpetual easement in favor of the Association and its authorized contractors for the maintenance, repair and replacement of the storm sewer lines. This right shall include the right of authorized contractors to enter upon said Lots from time to time as necessary to perform said work.

(h) Utilities. Each Lot shall be subject to a perpetual easement in favor of the Declarant, the Association, Builders and subcontractors, and, in the event that Declarant or a Builder installs utilities on a Lot which benefit adjoining Lot Owners, in favor of any benefited Lot Owners and their contractors and subcontractors, as well as any public utility company, water main, water services, sewer services or cable company, for the erection, installation, construction, maintenance, repair and replacement of wires, lines, meters, conduits, sewer taps, and attachments appurtenant to, above and below ground and in connection with the transmission of electricity, gas, water, telephone, community antennae or satellite dish, television cables and other utilities.

(i) Construction and Boundary Line Improvements. Each Lot shall be subject to a temporary construction easement in favor of Declarant, authorized Builders and contractors, and adjoining Lot Owners for construction activities on any Lot, including but not limited to the installation of boundary line improvements such as walls, fences and hedges. Any improvement made by an adjoining Lot Owner shall be subject to the architectural control provisions contained herein and must be approved by Declarant or the Association, as applicable, prior to installation.

**ARTICLE V.
THE ASSOCIATION**

Section 1. The Association. Prior to the date this Declaration has been filed for record with the County Clerk, Declarant has caused the Association to be formed, and the Association does now exist, under its Articles of Incorporation and Bylaws.

The Association is and shall be responsible for the maintenance of the Area of Common Responsibility, the enforcement of the covenants and restrictions set forth in this Declaration, and the performance of such other duties and services as are required of the Association hereunder or as the Board of Directors shall deem to be in the best interests of the Members of the Association.

Section 2. Membership. Every Owner is and shall be a Member of the Association. In no event shall such membership be severed from the Ownership of such Lot. Every Owner shall also be a Recreation Member.

Section 3. Remedies, Enforcement and Suspension of Membership Rights. In addition to and not in limitation of all other rights it may have, the Association, acting through its Board of Directors, shall have the full right and authority to enforce the architectural control provisions, use restrictions and all other provisions of the Declaration and Bylaws and the rules and regulations promulgated thereunder by the imposition of reasonable monetary fines, suspension of use and voting privileges, suspension of water or other utility service provided by or through the Association, and the exercise of self-help (specifically including but not limited to the towing or booting of vehicles that are in violation of the parking rules and regulations). Any such suspension of use and voting privileges shall not affect such Member's obligation to pay assessments coming due during the period of such suspension and shall not affect the permanent charge and lien on the Member's Lot in favor of the Association. The Association, acting through its Board of Directors, shall further have the full and complete right to exercise reasonable business judgment in the decision to pursue enforcement action in any particular case, without waiver of the Association's right to enforce the same provision at a later time under other circumstance or preclude the Association from enforcing any other covenants, restriction or rule.

Section 4. Meetings of the Membership. All matters concerning the meetings of Members of the Association, including the time at which and the manner in which notice of any said meeting shall be given to Members, the quorum required for the transaction of business at any meeting, and the vote required on any matter, shall be as specified in this Declaration, or in the Articles of Incorporation or the Bylaws, or by law.

Section 5. Association Acts Through Its Board of Directors. Whenever approval of, or action or inaction by, the Association is referred to or called for in this Declaration, such action, inaction or approval shall be by the Board of Directors of the Association, unless it is specifically stated in this Declaration, the Articles of Incorporation or the Bylaws with respect to such action, inaction or approval that the Members of the Association or the Owners of Lots must vote. No member of the Board of Directors of the Association or any officer of the Association (including, without limitation, any such individual who shall have been appointed by Declarant during the Declarant Control Period, as such term is defined in the Bylaws) shall be personally liable to any Owner of any Lot for any mistake of judgment or for any other act or omission of any nature whatsoever, except for any acts or omissions found by a court of competent jurisdiction to constitute gross negligence or fraud.

Section 6. Professional Management. The Association may, but shall not be obligated to, obtain and pay for the services of any Person or other entity to manage the affairs of the Association, or any part thereof, as the Board of Directors deems to be in the best interests of the Association.

**ARTICLE VI.
ASSESSMENTS AND CHARGES**

Section 1. Creation of Lien and Personal Obligation. Each Owner, by acceptance of a deed or other conveyance for an Improved Lot, covenants and agrees to pay to the Association all assessments and charges which are levied by the Association against the Lot(s) owned by such person in accordance with the terms and provisions

of this Declaration.

All sums lawfully assessed by the Association against any Lot and the Owner thereof, together with interest thereon, late fees in the amount of 10% of the sums owed or \$10.00, whichever is higher, and all costs of collection thereof, shall, from the time the sums become due and payable, be the personal obligation of the Owner, and the Owner's heirs, devisees, legal representatives, successors and assigns, of such Lot and constitute a continuing lien in favor of the Association on such Lot prior and superior to all other liens whatsoever except: (1) Liens for ad valorem taxes on the Lot; (2) The lien of any Mortgage covering the Lot and the lien of any Mortgage recorded prior to the recording of this Declaration; and (3) The lien of any secondary purchase money mortgage covering the Lot, provided that neither the grantee nor any successor grantee of such mortgage is the seller of the Lot. The covenant to pay assessments herein stated is and shall be a covenant running with the land.

Section 2. Purposes of Assessments. The assessments levied by the Association pursuant to this Article shall be used to pay the costs and expenses which the Association shall incur in connection with the performance of its duties and responsibilities pursuant to this Declaration, the Articles of Incorporation and the Bylaws and for such other purposes as the Board of Directors shall deem necessary or desirable to promote the health, safety and welfare of the Association and its Members (such costs and expenses being herein referred to as the "Annual Expenses").

Section 3. Determination of Annual Assessment and Shares Thereof. Prior to the commencement of each fiscal year of the Association or at any time it deems best (said fiscal year being specified in the Bylaws), the Board of Directors shall estimate the total amount of the Annual Expenses which are anticipated to be incurred by the Association during such fiscal year and shall determine the amount which will be deposited during such fiscal year into reserve funds maintained by the Association. The Board of Directors shall thereupon adopt a budget for the Association's expenditures and reserves based upon such estimate and providing for the total annual assessment to be levied against the Members of the Association for such fiscal year (the total assessment which shall be so determined and levied for any fiscal year is herein referred to as the "Annual Assessment"). The assessments provided for herein shall commence as to a Lot on the date that a Lot becomes an Improved Lot, with all Improved Lots being assessed equally, except as may be specifically set forth otherwise herein. No Annual Assessment shall be assessed against any Lot owned by Declarant or against any Lot while it is being used as a Model Home. The Board of Directors shall send a copy of the budget so adopted by it, together with a written notice of the amount of the Annual Assessment so determined for such fiscal year and the amount of such Annual Assessment which shall be levied against each Lot, to the Owner of every Lot. The amount of such Annual Assessment which shall be levied against each Lot shall be due and payable to the Association in such installments as the Board of Directors shall determine and shall be paid to the Association when due without further notice.

Section 4. Special Assessments. If for any reason, including non-payment of any assessments to the Association by the persons liable therefor, the budget adopted by the Board of Directors for any fiscal year shall prove to be inadequate to defray the Annual Expenses for such fiscal year, or if the Board of Directors shall determine that it is in the best interests of the Association to levy a special assessment to pay the costs of any capital improvements or capital repairs, the Board of Directors shall have the authority to levy a special assessment against the Lots and the Owners thereof to raise such needed funds. Any special assessment levied by the Board of Directors pursuant to the provisions of this section shall be payable at such times and such installments as the Board of Directors shall determine. Each Improved Lot shall be liable for the payment of an equal share of every special assessment which shall be levied by the Association pursuant to the provisions of this section; provided that in no event shall Declarant be obligated to pay any special assessment.

Section 5. Specific Assessments. The Board of Directors may levy specific assessments against individual Owners (i) for the purpose of paying for the costs of any construction, reconstruction, repair or replacement of any damaged component of the Common Areas, or of any monument, landscaping, detention pond, amenity or other thing maintained by the Association, which is occasioned by the act(s) of individual Owner(s) and not the result of ordinary wear and tear, (ii) for the payment of fines, penalties or other charges imposed against an individual Owner relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Bylaws, or any rules or regulations promulgated hereunder; or (iii) for any common expenses, other than expenses for the maintenance of the Common Areas, which benefit less than all of the Lots or which significantly disproportionately benefit all Lots (which expenses may be specially assessed equitably among all of the Lots

benefited according to the benefit received); provided that in no event shall Declarant be obligated to pay any specific assessment, nor shall a specific assessment be assessed against any Lot while it is being used as a Model Home. Failure of the Board of Directors to exercise its authority under this section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board of Directors' right to exercise its authority under this section in the future with respect to any expenses.

Upon the establishment of a specific assessment under this section, the Board of Directors shall send written notice of the amount and due date of such specific assessment to the affected Owner(s) at least thirty (30) days prior to the date such specific assessment is due.

Section 6. Special Assessment for Working Capital Reserve. Upon the first transfer of title to an Improved Lot (or, in the case of a Model Home, the thirtieth (30th) day after the Lot ceases to be used as a Model Home) and upon each resale of an Improved Lot thereafter, there shall be levied against such Improved Lot and paid to the Association a special assessment as set from time to time by Declarant or the Board of Directors of the Association. Such amount shall not be less than 1/6 of the Annual Assessment or greater than the total amount of the Annual Assessment which shall have been levied against Improved Lots for the calendar year in which such transfer of title shall take place. Declarant (or Builder, if the Lot is owned by a Builder) shall endeavor to collect such special assessment at the closing of the initial purchase of the Improved Lot; however, the failure to collect such special assessment at that time shall not excuse the obligation to make such payment. Neither Declarant nor a Builder shall be liable for the payment of such special assessment.

Section 7. Effect of Non-Payment of Assessments; Remedies of the Association.

(a) In the event that any Member of the Association shall fail to pay, within ten (10) days after the date the same is due and payable, any annual, special or specific assessment, or any installment of any such assessments which is payable by him to the Association, the entire amount of such assessment, including the portion thereof which would otherwise be payable in installments, may be declared by the Board of Directors to be immediately due and payable in full to the Association. All such amounts so declared by the Board of Directors to be due and payable in full to the Association shall be secured by the lien of the Association on every Lot owned by the delinquent Member, which lien shall bind such Lot or Lots in the hands of the then Owner, and his heirs, devisees, successors and assigns. In addition to the lien rights, the personal obligation of the then Owner to pay such assessments shall remain his personal obligation and shall also pass to his successors in title. Such Owner shall nevertheless remain as fully obligated as before to pay to the Association any and all amounts which said Owner was obligated to pay immediately preceding the transfer; and such Owner and such successors in title shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such Owner and successors in title creating any indemnification of the Owner or any relationship of principal and surety as between themselves. To the extent permitted by applicable law, the Board of Directors may suspend water, electricity, heat, air conditioning or cable television service paid for as a part of the Annual Expenses. The utility services shall not be required to be restored until all judgments are paid in full and any reasonable utility provider charges or other reasonable costs incurred in suspending and restoring such services are paid in full, at which time the Association shall direct the utility provider to restore the service. The Board of Directors may also suspend the use of the Recreational Facilities at Brookwood Lake Subdivision for any Recreation Member who becomes delinquent in the payment of any annual, special, or specific assessment due by such Member or any charge, fee or fine owed by such Member and such rights to use such facilities shall not be restored until all payments are paid in full to the Association.

(b) All amounts which the Board of Directors shall declare to be due and payable pursuant to this section shall be subject to late fees in the amount of 10% of the sums owed or \$10.00, whichever is higher, and shall bear interest from the date of delinquency at the lower of the rate of ten (10%) percent per annum or the highest rate permitted by law. The Association may bring legal action against the Member of the Association personally obligated to pay the same, or foreclose its lien upon the Lot or Lots of such Member, in either of which events such Member shall also be liable to the Association for all costs and attorneys' fees which the Association shall incur in connection with the collection of such delinquent amounts.

Section 8. Budget Deficits during Declarant Control Period. Declarant may advance funds to the Association sufficient to satisfy the deficit, if any, in any fiscal year between the actual operating expenses of the

Association (exclusive of any allocation for capital reserves) and the annual and special assessments for such fiscal year. Such advances shall be evidenced by promissory notes from the Association in favor of the Declarant and shall be paid back to Declarant if and to the extent that sufficient funds are generated by assessments in future years until such time as Declarant no longer has the authority to appoint the directors and officers of the Association.

Section 9. Failure to Assess. The failure of the Board of Directors to fix the assessment amounts or to deliver to each Owner the assessment notice shall not be deemed a waiver, modification or release of any Owner of the obligation to pay assessments. In such event, each Owner shall continue to pay assessments on the same basis as for the last year for which an assessment was made until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

ARTICLE VII. ARCHITECTURAL CONTROL

Section 1. Architectural Approvals and Restrictions. No Exterior Structure or Improvement, as defined herein, shall be placed, constructed, erected, installed or made on any Lot unless such Exterior Structure or Improvement meets all zoning requirements and square footage and other requirements that may be set forth on the Plat and is in strict compliance with the provisions of this article.

Section 2. Architectural Control Committee. Responsibility for the review of all applications under this Article shall be handled by the Architectural Control Committee ("ACC"), the members of which need not be Members of the Association and may, but need not, include architects, landscape architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Association. The ACC may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred by the ACC in having any application reviewed by architects, engineers or other professionals.

The ACC shall have exclusive jurisdiction over all construction, alterations or additions on any portion of the Property and shall be the sole arbiter of applications and may withhold approval for any reason, including, without limitation, purely aesthetic considerations. The ACC shall have the right, but not the obligation, to promulgate written design guidelines and standards for the Property in order to provide guidance to Owners and Builders regarding the approval process, which guidelines and standards may be amended by the ACC at any time and from time to time. Compliance with such guidelines and standards shall not guarantee approval of any application.

Until the termination of the Development Period, Declarant retains the right to appoint all members of the ACC, who shall serve at the Declarant's discretion. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration or surrender of such right, the Board of Directors shall appoint the members of the ACC, who shall thereafter serve and may be removed in the Board of Directors' discretion.

Section 3. Exterior Structure or Improvement. The term "Exterior Structure or Improvement" shall mean an exterior construction, alteration, addition or change of any nature whatsoever on a Lot [including but not limited to (i) a building, fence, wall, patio, playhouse, playground equipment, swimming pool, spa, Jacuzzi, or other structure, (ii) staking, clearing, excavation, grading, or filling of land, (iii) change in color, type or material of any existing improvement, (iv) planting or removal of landscaping materials (v) placement or installation of exterior lighting, statuary, flags, flagpoles, fountains and similar items, (vi) modification of the interior of a porch, deck, patio or similar portion of a structure which is visible from outside the Lot, or (vii) the addition of storm or screen doors or windows]. No Exterior Structure or Improvement shall be commenced, placed or maintained upon any Lot until complete and final plans and specifications setting forth the information hereinafter described shall have been submitted to and approved by the ACC as to the harmony of the exterior design and general quality with the existing standards of the improvements located on the other Lots, and as to location in relation to surrounding structures and topography.

Section 4. Approval Procedures. The plans and specifications which must be submitted to the ACC prior to the commencement of any such work upon any Lot, as hereinabove provided, shall contain at least the nature, kind, shape, height, materials, color, texture and location of such structure, alteration or landscaping and such other information as the ACC may reasonably request in order to render a decision. Notwithstanding the above, however, the ACC, by resolution, may exempt certain activities from the application and approval requirements of this Article, provided that such activities are undertaken in strict compliance with the requirements of such resolution.

In the event that the ACC fails to approve or disapprove any application within thirty (30) days after submission of all information and materials reasonably requested by the Association, the application shall be deemed approved.

The ACC shall, upon demand, furnish to any Member of the Association a certificate in writing signed by a member of the ACC, stating that any Exterior Structure or Improvement that has been approved and built in accordance with the provisions of this section is in compliance with the provisions of this section, and such certificate shall be conclusive as to whether the same is in such compliance.

Section 5. Construction Period. Unless otherwise agreed to in writing by the ACC, any Exterior Structure or Improvement must be commenced within 30 days after ACC approval of the plans and specifications for same. After commencement of construction, the Owner or Builder shall diligently continue construction to completion in a timely manner and within the time limits and in the manner specified by the ACC at the time the project is approved.

Section 6. No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

Section 7. Variance. The ACC, in its sole discretion, may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. No variance shall (i) be effective unless in writing; (ii) be contrary to this Declaration; or (iii) prevent the ACC from denying a variance in other circumstances.

Section 8. Limitation of Liability. The standards and procedures established pursuant to this Article are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Property only, and shall not create any duty to any Person. Neither the Declarant, the Association, nor the ACC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, the adequacy of soils or drainage, or for ensuring compliance with building codes and other governmental requirements or regulations. Neither Declarant, the Association, the ACC, nor any member of any of the foregoing, shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Lot. In all matters, the ACC and its members shall be defended and indemnified by the Association as provided in this Declaration and the Articles of Incorporation and Bylaws of the Association as though they were officers of the Association.

Section 9. Enforcement. Declarant, any member of the ACC, the Board of Directors, or the representatives of each, shall have the right, during reasonable hours and after reasonable notice, to enter upon any Lot to inspect for the purpose of ascertaining whether any Exterior Structure or Improvement is in violation of this Article. Any Exterior Structure or Improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request by the ACC, the Owner shall, at its own cost and expense, remove such structure or improvement and restore the Lot to substantially the same condition as existed prior to the nonconforming work. Upon the failure or refusal of any person to perform the restoration required herein, the ACC, or their authorized agents or employees, may, after fourteen (14) days' notice to such person, enter upon the property upon which such unauthorized work has been performed, and make such restoration as the ACC, in the exercise of its discretion, may deem necessary or advisable. Entry for such purposes and in compliance with this Section shall not constitute a trespass. The person upon whose Lot such restoration work shall have been so performed shall be personally liable to the Association for all direct and indirect costs which the Association shall incur in the performance of such restoration work, including without limitation attorneys' fees, and the liability for such cost shall be secured by all

the liens, and shall be subject to the same means of collection, as the assessments provided for in this Declaration. Such costs shall be paid to the Association by the person liable for the same at the same time as the next due Annual Assessment payment, or at such earlier time, and in such installments, as the ACC shall determine.

Unless otherwise specified in writing by the ACC, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot, unless approval to modify any application has been obtained. In the event that any person fails to commence and diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Lot and an opportunity to be heard, to enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner thereof as a specific assessment pursuant to this Declaration.

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

Section 10. Declarant Exemption. Notwithstanding anything stated to the contrary herein, nothing contained in this Article shall be construed as prohibiting any construction, alteration, addition or removal by the Declarant upon any Lot while such Lot is owned by the Declarant. Any construction, alteration, addition or removal performed by the Declarant or, with Declarant's consent, by any Builder, upon any Lot while such Lot is owned by the Declarant or such Builder shall be exempt from the provisions of this Article.

ARTICLE VIII. RESTRICTIONS

In order to provide for the maximum enjoyment of the Lots by all of the residents thereof and to provide protection for the value of the same, the use of the Lots shall be restricted to, and shall be only in accordance with, the applicable zoning ordinances with respect to the Property and the following provisions:

Section 1. Residential Use. All of the Lots shall be restricted exclusively to single-family residential use. The term "single-family" shall include one or more related or unrelated adults, as well as the children of any such adults. No Lot shall at any time be used for any commercial, business or professional purpose. Notwithstanding the foregoing, however, nothing set forth in this section shall prohibit: (i) the Declarant or a Builder from conducting such sales, leasing and promotional activities on any Lot as Declarant shall determine; or (ii) the Owner of any Lot from using a portion of a building located on such Lot as an office, provided that such use does not create regular customer, client or employee traffic to and from such Lot and no sign, logo, symbol or nameplate identifying such business is displayed anywhere on such Lot.

Section 2. Prohibited Activities. No noxious, offensive, unsightly or unkempt activity shall be conducted on any Lot. Each owner of any Lot, his family, tenants, guests and invitees, shall refrain from any act or use of his property which could reasonably cause embarrassment, discomfort, annoyance or nuisance to any other resident or residents of any other Lot. Storage or placement of furniture, potted plants, fixtures, appliances, machinery, bicycles, towels, clotheslines, yard art, equipment or other goods or chattels on any Lot which is visible from outside of the Lot (including but not limited to stoops, steps, driveways, decks and patio areas) is prohibited except as specifically permitted in this Declaration. No nuisance shall be permitted to exist upon any Lot. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any Lot, or any portion thereof.

Section 3. Animals. No animals other than dogs, cats, aquarium fish and birds are permitted on any portion of the Property. Cats may not be left or kept unattended outdoors. Dogs must be kept on a leash and be under the physical control of a responsible person at all times while outdoors unless contained within a fenced area. Any feces left by an animal upon the Common Areas (including the street) or another Owner's Lot must be removed immediately by the owner of the animal or the person responsible for the animal. No Owner or Occupant may keep, breed or maintain any pet for any commercial purpose or keep or maintain a dog whose persistent barking causes annoyance or nuisance to any other resident of any other Lot.

No animal determined to be dangerous, trained to be used for protection or which has an aggressive nature, in the Board of Directors' sole and absolute discretion, may be brought onto or kept on the Property at any time. The Board of Directors' may, without notice, have removed by the appropriate animal control authority any animal that presents an immediate danger to the health, safety or property of any Person.

Each Owner and Occupant who keeps an animal on the Property agrees to indemnify and hold the Association and its directors, officers and agents harmless from any loss, claim or liability of any kind whatsoever arising by reason of such animal.

Section 4. Antennae; Aerials; Satellite Dishes. No transmission antenna of any kind may be erected anywhere on a Lot without the prior written consent of the ACC. No direct broadcast satellite (DBS) antenna or multi-channel multi-point distribution service (MMDS) antenna larger than one (1) meter in diameter may be placed, allowed or maintained upon any Lot. A DBS or MMDS antenna one (1) meter or less in diameter or television broadcast service antenna may only be installed in accordance with Federal Communication Commission (FCC) rules and the rules and regulations of the Association as authorized by the FCC, as both may be amended from time to time. HAM radios, two way radios and other hobby or professional radio communication transmission equipment are prohibited.

Section 5. Drainage. Catch basins, retention ponds, detention ponds, drainage easement areas, storm lines and any other related drainage facility are for the purpose of controlling the natural flow of water only. No obstruction or debris shall be placed or allowed to remain in these areas. No Owner may obstruct or alter the drainage flows established by Declarant without prior written approval in accordance with the architectural control provisions of the prior Article.

Section 6. Grills and Outdoor Cooking Devices. The use of grills, smoker and outdoor cooking equipment shall only be permitted in accordance with municipal, county and state ordinances and laws.

Section 7. Landscaping. In order to preserve the natural beauty of the development, after the Lot has become an Improved Lot, no healthy living tree, shrub, evergreen or natural ground cover shall be removed from any Lot or from such Lot's Back Buffer, unless such removal has first been approved by the ACC.

Section 8. Leasing. In order to protect the equity of the individual Lot Owners and to preserve the character of the Property as a community of predominantly owner-occupied homes, the leasing of Improved Lots shall be governed by the restrictions imposed by this Section. **Except as provided herein, the leasing of an Improved Lot shall be prohibited.**

(a) **Definitions.** The terms "leasing", "lease" or "leased" shall mean the regular, exclusive occupancy of a home by any person(s) other than the Owner, for which the Owner receives any consideration or benefit including, but not limited to, a fee, service, or gratuity. For purposes hereof, occupancy by a roommate of an Owner occupant shall not constitute leasing.

(b) **General.** Any Owner of an Improved Lot may apply in writing to the Board to be a "Leasable Lot" (which shall mean an Improved Lot authorized to be leased). Upon approval of such written application, the Improved Lot shall become a Leasable Lot, so long as no more than thirty percent (30%) of the Improved Lots are designated as Leasable Lots at any one time. If the designation of an Improved Lot as a Leasable Lot would result in more than thirty percent (30%) of the Improved Lots being designated as Leasable Lots, such Improved Lots shall be placed at the end of a waiting list to be a Leasable Lots. At such times as less than thirty percent (30%) of the Improved Lots are Leasable Lots, the Board shall notify the Owner of the Improved Lot at the top of the waiting list that it has become a Leasable Lot, and such Owner shall have ninety (90) days within which to lease the Improved Lot or it shall automatically revert to an Improved Lot that may not be leased. Any Leasable Lot shall automatically convert to an Improved Lot without the ability to lease if the Improved Lot is not subject to an approved lease for ninety (90) or more consecutive days.

(c) **Undue Hardship.** In addition to the provisions of subparagraph (b) above, so long as no more than forty percent (40%) of all Improved Lots are leased, the Board shall be empowered to allow reasonable leasing of an

Improved Lot upon application in accordance with this Paragraph to avoid undue hardship, including, but not limited to the following situations: (1) an Owner must relocate his or her residence outside the Atlanta metropolitan area and cannot, within six (6) months from the date that the Improved Lot was placed on the market, sell the Improved Lot except at a price below the current appraised market value, after having made reasonable efforts to do so; (2) where the Owner dies and the Improved Lot is being administered by his or her estate; and (3) the Owner takes a leave of absence or temporarily relocates and intends to return to reside in the Improved Lot, in which case the Owner must reapply every year for renewal of the hardship exception. Those Owners who have complied with this subparagraph, have demonstrated that the inability to lease their Improved Lots would result in undue hardship, and have obtained the requisite written Board approval may lease their Improved Lots for such duration as the Board reasonably determines is necessary to prevent undue hardship.

Any Owner who believes that he or she must lease his or her Improved Lot to avoid undue hardship shall submit a written application to the Board setting forth the circumstances necessitating the leasing, a copy of the proposed lease, and such other information as the Board may reasonably require. Leasing in the case of undue hardship shall be permitted only upon the Board's written approval of the Owner's application. Any transaction which does not comply with this Paragraph shall be voidable at the Board's option.

(d) Leasing Provisions. Leasing which is authorized hereunder shall be governed by the following provisions:

(i) Notice. At least seven (7) days prior to entering into the lease of an Improved Lot, the Owner shall provide the Board with a copy of the proposed lease agreement. The Board shall approve or disapprove the form of said lease. In the event a lease is disapproved, the Board shall notify the Owner of the requisite action to be taken in order to bring the lease in compliance with the Declaration and any rules and regulations adopted pursuant thereto.

(ii) General. Leasable Lots may be leased only in their entirety; no fraction or portion may be leased without prior written Board approval. All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. The Board may maintain and, upon request, provide a form which is deemed acceptable. There shall be no subleasing of Leasable Lots or assignment of leases without prior written Board approval. All leases must be for an initial term of not less than one (1) year, except with written Board approval, which shall not be unreasonably withheld in cases of undue hardship. Within ten (10) days after executing a lease agreement for the lease of an Improved Lot, the Owner shall provide the Board with a copy of the lease and the name of the lessee and all other people occupying the Improved Lot. The Owner must provide the lessee copies of the Declaration, Bylaws, and the rules and regulations. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed lessee; the Board's approval or disapproval shall be limited to the form of the proposed lease.

(iii) Liability for Assessments, Use of Common Elements, and Compliance with Declaration, Bylaws, and Rules and Regulations. Each Owner covenants and agrees that any lease of an Improved Lot shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant, and the lessee, by occupancy of the Leasable Lot, agrees to the applicability of this covenant and incorporation of the following language into the lease:

(aa) Compliance with Declaration, Bylaws, and Rules and Regulations. Any violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto by the lessee, any Occupant, or any guest of lessee, is deemed to be a default under 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, Bylaws, and the rules and regulations adopted pursuant thereto, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof. If the Association proceeds to evict the lessee, any costs, including attorney's fees and court costs, associated with the eviction shall be an assessment and lien against the Leasable Lot.

(bb) Liability for Assessment. When a Lot Owner who is leasing his or her Improved Lot fails to pay any annual or special assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board, lessee shall pay to the Association all unpaid annual and special assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by lessee. However, lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If lessee fails to comply with the Board's request to pay assessments or other charges, lessee shall pay to the Association all amounts authorized under the Declaration as if lessee were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

(e) Applicability of this Section. This Section on Leasing shall not apply to any leasing transaction entered into by the Declarant, the Association or the holder of any first Mortgage on an Improved Lot who becomes the Owner of an Improved Lot through foreclosure or any other means to the satisfaction of the indebtedness secured by such Mortgage.

Section 9. Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless approved in accordance with the provision of Article VII hereof.

Section 10. Entry Features and Street Signs. Owners shall not alter, remove or add improvements to any entry features or street signs constructed or erected by the Declarant or the Association on any Lot, or any part of any easement area associated therewith, without prior approval in accordance with the provision of Article VII hereof.

Section 11. Firearms. The use of firearms on the Property is prohibited. The term "firearms" includes, without limitation, B-B guns, pellet guns, archery equipment and firearms of all types.

Section 12. Lighting. Exterior lighting visible from the street shall not be permitted without the prior written consent of the ACC except for seasonal decorative lights and front house illumination of Model Homes.

Section 13. Mailboxes. No change or addition, other than by the Board of Directors, shall be made to the design, materials or location of the original mailboxes installed by the Declarant for the benefit of the Lots.

Section 14. Signs. No sign of any kind or character shall be erected on any portion of any Lot, or displayed to the public on any portion of any Lot, without the prior written consent of the Board of Directors, except for customary name and address signs and any sign required by legal proceedings. The restriction herein stated shall include the prohibition of placement of any sign within a building located on any Improved Lot in a location from which the same shall be visible from the outside and the placement of any sign in or upon any motor vehicle.

Section 15. Stoops, Decks, Patio Areas, Storage Buildings. Patio furniture, potted plants and other items may be permitted on stoops, decks and patios, subject to local ordinances and any restrictions and rules promulgated by the Association with respect thereto.

If any area under a deck attached to a home is used for storage (such as for garden equipment), such area must be screened from view of other Lots and any street and must be approved in accordance with the architectural control provisions of the prior Article.

Section 16. Trash, Rubbish and Garbage. No garbage or trash shall be placed or kept on the Property except in sealed bags placed in proper containers of a type, size and style which are approved by the Board of Directors or as required by the applicable governing jurisdiction, and subject to rules promulgated by the Association. No person shall burn rubbish, garbage or any other form of solid waste on any Lot or on Common

Areas or within the right of way of any street within the Property. All garbage receptacles shall be stored out of sight at all times except on the days on which trash is removed by the designated garbage-collecting agency.

Section 17. Vehicles and Parking. The Association shall have the right to promulgate rules regulating the use of all streets and parking on the Property. The term "vehicles" as used in this section shall include without limitation automobiles, trucks, boats, watercraft, trailers, motorcycles, scooters, campers, vans, mobile homes, and recreational vehicles. The term "commercial" shall include but not be limited to any vehicle that is oversized or any type of vehicle with advertising or lettering.

No vehicle may be left upon any portion of the Property except upon a driveway or within a garage. All Owner and occupant vehicles must be kept and stored when not in use within the Improved Lot's garage space or driveway, and only licensed and operable automobiles and non-commercial pickup trucks may be parked on a driveway, with the exception of emergency vehicle repairs and commercial vehicles that are temporarily parked for the purpose of servicing a Lot or the Property. Garage doors must remain closed at all times except for entry and exit by vehicles and except for such periods as are necessary for the conduct of homeowner related maintenance activities.

If any vehicle is parked on any portion of the Property in violation of this section or in violation of the Association's rules and regulations, the Board, in accordance with the requirements of applicable law, may cause the towing or booting of the vehicle and neither the Association nor any officer or agent of the Association shall be liable to any person for any claim of damage as a result of such towing or booting activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow or boot.

Section 18. Window Air-Conditioners. No air-conditioner shall be installed in any window of any building located on any Improved Lot, nor shall any air-conditioner be installed on any building located on any Improved Lot so that the same protrudes through any exterior wall of such building.

Section 19. Window Treatments. Except as may be otherwise approved in accordance with the Architectural Control provisions contained in the previous Article, all window treatments visible from the outside of an Improved Lot shall be white or off-white in color. No bed sheets, newspaper, tin foil, or similar materials may be used as window treatments.

Section 20. No Subdividing of Lots or Timesharing. No Lot may be further subdivided into any smaller Lot. No Lot shall be made subject to any type of timesharing, fraction-sharing or similar program whereby the exclusive use of the Lot rotates among members of the program on a fixed or floating time schedule over a period of years.

Section 21. No Combination of Lots. Contiguous Lots may not be combined together without the prior written consent of the Board of Directors. In the event that the Board of Directors does approve such a combination, such combination shall thereafter be deemed to be a single Lot for all purposes of this Declaration, except that notwithstanding the foregoing, the amount of assessments for which such single Lot shall be thereafter liable shall be equal to the total assessments for which all of the Lots which were so combined would have been liable had such combination not taken place.

Section 22. Development Period. During the Development Period, no amendment to or modification of any use restrictions, rules or design guidelines shall be adopted without the prior written consent and approval of Declarant. The Association shall not exercise any authority that would impair the rights of the Declarant under this Declaration or interfere with Declarant's development of, construction on, or marketing of any portion of the Property or the Additional Property, or diminish the level of services being provided by the Association.

Section 23. Interpretation. In all cases, the covenants and restrictions herein contained shall be construed and interpreted in a manner which, in the opinion of the Board of Directors, will best effect the intent of the general plan of development and maintenance herein set forth. Subject to the terms of this Article and the Board of Directors' duty to exercise business judgment and reasonableness, the Board of Directors may modify, cancel, limit,

create exceptions to, or expand the restrictions contained herein and may create, modify and enforce reasonable rules governing the use of the Property consistent with the law and with other provisions in this Declaration. The Board of Directors shall send notice to all Owners concerning any new or amended restrictions or rules prior to the date that such restrictions or rules go into effect. For this purpose, notice may be sent to each Owner by U.S. mail, hand delivery, electronic telecommunication or publication in a community notice or newsletter delivered or mailed to each Owner.

ARTICLE IX. MAINTENANCE RESPONSIBILITIES

Section 1. Association Maintenance Responsibility. Except as may be specifically provided otherwise below, the Association shall maintain the Area of Common Responsibility (whether or not constituting Common Areas), including: (i) all entrance gates and entry features to the Property, including any electrical and irrigation systems serving the entry features; (ii) all streets, alleys, parking areas (other than driveways) and sidewalks (but not front walks leading from a sidewalk or driveway to a homeowner's front stoop or front steps); (iii) all entrance landscaping and landscaping within public rights-of-way abutting the Property; (v) all storm water detention or drainage facilities serving the Property (vi) all amenities, including the park and open space; and (vii) sanitation removal.

The Association shall also provide landscaping maintenance on the front yard of each Lot from the street to the front wall of the home, which landscaping maintenance shall consist of and be limited to the following: (i) regular mowing and edging of the grass; (ii) the pruning and trimming of the bushes and shrubs that were originally installed by the Declarant or Builder; (iii) the twice-yearly replacement of pine straw; and (iv) the adjustment and setting of the irrigation system and its automatic timers. All landscaping and maintenance obligations of the Association under this Article shall be performed in such manner and on such timetable as is necessary or desirable to maintain the Community Wide Standards. The Board of Directors, in its sole discretion, may leave portions of the Property as undisturbed natural areas and may change the landscaping on the Area of Common Responsibility at any time and from time to time, including the adding or modifying of landscaping improvements, such as the planting of seasonal flowers.

The Association may be relieved of all or any portion of its maintenance responsibilities to the extent that such property is dedicated to any local, state or federal government or quasi-governmental entity and said entity accepts the responsibility for maintenance. In the event of any such assumption, assignment or dedication, however, the Association may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board of Directors determines that such maintenance is desirable or necessary to maintain the Community Wide Standards.

In the event that the Association determines that any maintenance which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, or the occupant, family, guest, invitee or lessee of an Owner, then the Association may perform such maintenance and all costs thereof may be assessed against the Owner as a specific assessment.

Section 2. Owner Maintenance Responsibility. Except to the extent that responsibility is assumed by the Association in Section 1 above, each Owner shall maintain and keep in good repair all structures and improvements on an Improved Lot and on such Lot's Back Buffer, in a manner consistent with the Community-Wide Standards, this Declaration, and all other governing documents. Without limiting the generality of the foregoing, each Owner of an Improved Lot is specifically responsible for all landscaping maintenance, repair and replacement of the side and rear yards of the Lot and such Lot's Back Buffer, as well as for the following items with respect to the front yard: (i) replacement of any dead vegetation; (ii) winterization of the irrigation system; (iii) maintenance and repair of the Lot's irrigation system, any hardscape improvements or items contained within the front yard that may be permitted by the terms of this Declaration, and all other structures and improvements thereon, including but not limited to the driveway, front stoop and front walk.

In the event the Board of Directors determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance of items for which such Owner is responsible, the Association shall, except in emergency situations, give the Owner written notice of the Association's intent to provide such necessary maintenance at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, or in the event that such maintenance is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions herein, the Association may provide such maintenance and all costs thereof shall be assessed against the Owner as a specific assessment.

Section 3. Damage or Destruction. In the event of the occurrence of any damage or destruction by fire or other casualty to the improvements on an Improved Lot, such damage or destruction shall be repaired or rebuilt, as applicable, in all events. All repair, reconstruction or rebuilding of the improvements shall be substantially in accordance with the plans and specifications for such damaged or destroyed Improved Lot immediately prior to the occurrence of such damage, or in accordance with such differing plans and specifications as are approved for such purpose by the Owner of such Improved Lot and the Board of Directors. The Owner of such damaged or destroyed Improved Lot shall be responsible for ensuring that the work of repairing, reconstructing or rebuilding a damaged or destroyed Improved Lot is completed as soon after the occurrence of such damaged or destruction as is reasonably practicable, at no cost or expense to the Association.

ARTICLE X. INSURANCE

Section 1. Insurance on Common Areas. The Association shall obtain and maintain casualty insurance for all insurable improvements located on the Common Areas. This insurance shall provide, at a minimum, fire and extended coverage 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. The Board of Directors shall obtain a public liability policy with a combined single limit of at least One Million Dollars (\$1,000,000.00) per occurrence applicable to the Common Areas 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, and, if reasonably available, directors' and officers' liability insurance. Policies may contain a reasonable deductible as determined by the Board of Directors. In addition, the Board of Directors shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on all persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall at least equal three months' total assessments plus reserves on hand. Fidelity coverage shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation. All such insurance coverage shall be written in the name of the Association.

Section 2. Individual Insurance. Each Owner, by virtue of taking title to a Lot subject to this Declaration, acknowledges that the Association has no obligation to provide any insurance for any portion of individual Lots and each Owner covenants and agrees with all other Owners and with the Association that each Owner will maintain at all times all-risk casualty insurance on the Lot and all structures constructed thereon, as well as a liability policy covering damage or injury occurring on a Lot. The casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an all-risk policy, if reasonably available, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction of a covered item in the event of damage or destruction from any such hazard.

The Board of Directors has the right, but not the obligation, to require the Owner to furnish a copy of such insurance policy or policies to the Association. In the event that any such Owner fails to obtain insurance as required by this section, the Association has the right, but not the obligation, to purchase such insurance on behalf of the Owner and to assess the cost thereof to the Owner, to be collected in the manner provided for collection of assessments herein.

Upon request by the Board of Directors, the Owner shall furnish a copy of such insurance policy or policies to the Association.

Section 3. Additional Insurance Requirements. The Board of Directors shall utilize reasonable efforts to include the following provisions in the policies that the Association obtains:

- (i) waiver of the insurer's rights of subrogation of any claims against directors, officers, employees, the managing agent, the individual Owners, occupants, and their respective household members;
- (ii) until the expiration of thirty (30) days after the insurer gives notice in writing to the Mortgagee of any Lot, the Mortgagee's insurance coverage will not be affected or jeopardized by any act or conduct of the Owner of such Lot, the other Owners, the Board of Directors, or any of their agents, employees, or household members, nor be canceled for nonpayment of premiums;
- (iii) an agreed value endorsement and an inflation guard endorsement; and
- (iv) any Insurance Trust Agreement will be recognized.

All policies of insurance shall be written with a company licensed to do business in the State of Georgia, and, if reasonably available, shall carry a "B+" or better rating from A. M. Best Company. Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors.

Additionally, the Association shall obtain such insurance coverage as is necessary to satisfy the requirements of state law, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the U.S. Department of Veterans Affairs, and the U.S. Department of Housing and Urban Development, if and to the extent applicable to the Property.

Nothing contained herein requires the Association to make a claim under the insurance policies upon the occurrence of an insured event. The Association has the right to exercise reasonable business judgment in all insurance decisions.

ARTICLE XI. MORTGAGEE PROVISIONS

Section 1. Notice of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Improved Lot number, shall be known as an "Eligible Holder"), and will be entitled to timely written notice of: (i) any condemnation loss of any casualty loss which affects a material portion of the Property or which affects any Improved Lot on which there is a Mortgage held, insured, or guaranteed by such Eligible Holder; (ii) any delinquency in the payment of assessments or charges owed by an Owner of an Improved Lot subject to the Mortgage of such Eligible Holder where such delinquency has continued for a period of sixty (60) days; (iii) any default in the performance by the Owner of the encumbered Improved Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days; and (iv) any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

Section 2. Audit. Upon written request of an Eligible Holder of a Mortgage and upon payment of all necessary costs, such Eligible Holder shall be entitled to receive a copy of audited financial statements of the Association within ninety (90) days of the date of the request.

Section 3. No Priority. No provision of this Declaration or the Bylaws gives any Owner or other party priority over any rights of a Mortgagee of any Improved Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards.

Section 4. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board of Directors to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

ARTICLE XII. AMENDMENT

Until the termination of the Development Period, the Declaration may be amended only by Declarant, who may unilaterally amend this Declaration for any purpose. Thereafter, Declarant may unilaterally amend this Declaration if such amendment is necessary to: (a) bring any provision hereof into compliance with any applicable governmental statute, rules or regulation or judicial determination which shall be in conflict therewith, (b) enable any reputable title insurance company to issue title insurance coverage with respect to the Lots, (c) enable an institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans (such as the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation) to make, purchase, insure or guarantee mortgage loans on the Lots, (d) an amendment is necessary to enable any governmental agency or private insurance company, including but not limited to the U.S. Department of Housing and Urban Development and the U.S. Department of Veterans Affairs, to insure or guarantee mortgage loans on the Lots. However, any such amendment shall not adversely affect the title to any Owner's Lot unless such Lot Owner shall consent thereto in writing,

After the termination of the Development Period, this Declaration may be amended only upon the affirmative vote or written consent, or any combination thereof, of two-thirds (2/3) of the Lot Owners. Notwithstanding the foregoing, after the termination of the Development Period, the Board of Directors, without the vote of the Members, may amend this Declaration for the sole purpose of electing to be governed by the provisions of the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, *et seq.*

Any amendment shall become effective upon the recording with the County Clerk of the instrument evidencing such change unless a later effective date is specified therein. If an Owner consents to an amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment. Any procedural challenge to an amendment must be made within six months of the recording of the amendment or such amendment shall be presumed to have been validly adopted.

Every Owner, by taking record title to a Lot, and each holder of a Mortgage upon any portion of any Lot, by acceptance of such Mortgage, hereby agrees that the terms, provisions, covenants and restrictions of this Declaration may be amended as provided herein.

ARTICLE XIII. MISCELLANEOUS

Section 1. Failure of Enforcement. In the event that the Association shall fail to enforce the compliance with any of the provisions of this Declaration by the Owner of any Lot, then the Owner of any other Lot shall have the right to file an action in the Superior Court of the county where the Property is located for an order from such Court requiring that the Association enforce such compliance; provided, however, in no event shall the Board of Directors, or any officer of the Association, or any of their agents, be personally liable to anyone on account of their failure to enforce any of the terms, provisions or restrictions set forth in this Declaration.

Section 2. No Waivers. In no event shall the failure by the Association to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, provisions or agreements set forth in this Declaration be construed as a waiver or relinquishment of the future enforcement of any such term, covenant, condition, provision, or agreement. The acceptance of performance of anything required to be performed with

knowledge of the breach of a term, covenant, condition, provision or agreement shall not be deemed a waiver of such breach, and no waiver by the Association of any term, covenant, condition, provision or agreement shall be deemed to have been made unless expressed in writing and signed by a duly authorized officer of the Association.

Section 3. 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 Owner, for himself or herself and his or her 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 Owner to protect his or her person and property and all responsibility to provide such security shall lie solely with each Owner. Neither Declarant nor the Association shall be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of safety measures undertaken. Each Owner further acknowledges that the Declarant will not be responsible or liable for any loss or damage resulting from any gates or entrances being open to allow access for construction vehicles, work crews and sales activities.

Additionally, neither the Declarant nor the Association shall be held liable for loss or damage to any property, including but not limited to any vehicle and any items in any vehicles, placed or kept in any parking area on the Property. Each Owner or Occupant who places or keeps a vehicle and/or any personal property in a vehicle or parking area does so at his or her own risk.

Section 4. Duration. This Declaration, and all of the terms, easements, provisions, liens, charges, restrictions and covenants set forth herein, shall run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty (20) years from and after the date this Declaration is recorded, after which time such covenants and restrictions shall be automatically extended for successive periods of twenty (20) years until the recordation of an instrument of termination within two (2) years of the expiration of the initial twenty-year period or any extension thereof, such instrument having been executed by a minimum of fifty-one percent (51%) of the record Owners of the Lots.

Section 5. Notices. Any notice required or permitted to be sent to any Member of the Association pursuant to any provision of this Declaration may be served by depositing such notice in the mails, postage prepaid, addressed to the Member or Owner to whom it is intended, at the address which such Member shall have furnished to the Secretary of the Association in accordance with the Bylaws, or, in the absence of any such address having been so furnished to the Secretary of the Association, at the address of the Lot owned by such Member. The date of service shall be the date of mailing. The address of Declarant or the Association shall be the address of its respective registered agent on file with the Secretary of State of Georgia. The date of service shall be the date shown on the return receipt. Rejection or other refusal to accept shall be deemed to be receipt of the notice sent.

Section 6. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if any provision of this Declaration or the application thereof 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 7. Judicial Proceedings. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any Person or Persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the Lots, to enforce any liens created by this Declaration. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least seventy-five percent (75%) of the Lot Owners. This section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including the foreclosure of liens); (b) the collections of assessments; (c) proceeding involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. This section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Section 8. Successors to Declarant. In no event shall any person or other entity succeeding to the interest of the Declarant by operation of law or through purchase of the Declarant's interest in all or any portion of the

Property at foreclosure, sale under power or by deed in lieu of foreclosure, be liable for any act, omission or matter occurring, or arising from any act, omission or matter occurring, prior to the date such successor succeeded to the interest of the Declarant.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed by its duly authorized officers on the day and year set forth below.

Signed, sealed and delivered this
27 day of January, 2008
in the presence of:

[Signature]
Unofficial Witness

[Signature]
Notary Public

[AFFIX NOTARIAL SEAL]



Amburgy Properties Caney, LLC,
a Georgia limited liability company

By: [Signature] (SEAL)
Name: Tommy C. Amburgy
Title: Manager

EXHIBIT "A"

LEGAL DESCRIPTION

All that tract or parcel of land lying and being in Land Lot 1061 of the 2nd District, 1st Section, Forsyth County, Georgia, containing 7.897 acres and being described as "Tract 1" and "Tract 2" according to a survey for Chicago Title Insurance Company, The Peachtree Bank and Amburgy Properties Cancy, I.I.C., prepared by Barton Surveying, Inc. by David Barton (GRLS 2533), dated October 12, 2006, as last revised November 1, 2006, and being more particularly described according to said survey as follows:

TO FIND THE TRUE PLACE OR POINT OF BEGINNING, commence at a corner common to Land Lots 1061, 1062, 1093 and 1094; run thence along the Land Lot line common to Land Lots 1061 and 1094 a distance of 679.75 feet to a point marked by a one-inch crimp top pin found, said point being the **TRUE PLACE OR POINT OF BEGINNING**.

FROM THE TRUE PLACE OR POINT OF BEGINNING AS THUS ESTABLISHED, run thence along the aforesaid Land Lot line North 89 degrees 41 minutes 39 seconds West a distance of 384.14 feet to a one-inch crimp top pin found; continue thence along aforesaid Land Lot line South 89 degrees 00 minutes 40 seconds West a distance of 49.61 feet to an iron pin set; leaving aforesaid Land Lot line, run thence North 28 degrees 54 minutes 50 seconds East a distance of 863.36 feet to a point in a 24 inch diameter pine tree; run thence North 00 degrees 37 minutes 50 seconds East a distance of 71.65 feet to an iron pin set located on the southerly right of way line of Caney Road (60 foot right of way); continue thence along aforesaid right of way line the following courses and distances:

South 89 degrees 22 minutes 10 seconds East a distance of 49.48 feet to a point;

Following a curve to the right an arc distance of 82.01 feet to a point, said curve having a radius of 350.55 feet and being subtended by a chord bearing and distance South 82 degrees 40 minutes 03 seconds East 81.82 feet;

Following a curve to the right an arc distance of 143.16 feet to a point, said curve having a radius of 926.38 feet and being subtended by a chord bearing and distance South 71 degrees 42 minutes 17 seconds East 143.02 feet;

Following a curve to the right an arc distance of 153.64 feet to a point, said curve having a radius of 546.80 feet and being subtended by a chord bearing and distance South 59 degrees 13 minutes 40 seconds East 153.14 feet;

South 51 degrees 10 minutes 41 seconds East a distance of 43.28 feet to a point;

Leaving aforesaid right of way line, run thence South 35 degrees 27 minutes 10 seconds West a distance of 487.33 feet to a one and one-half inch open top pin found; run thence South 26 degrees 17 minutes 38 seconds West a distance of 301.43 feet to a point marked by a one inch crimp top pin found, said point being the **TRUE PLACE OR POINT OF BEGINNING AS THUS ESTABLISHED**.

Return to:
The Abram Law Group, LLC
1200 Ashwood Parkway, Suite 560
Atlanta, GA 30338
770/349-0120

COLLATERAL ASSIGNMENT OF DECLARANT'S RIGHTS

THIS COLLATERAL ASSIGNMENT OF DECLARANT'S RIGHTS (this "Assignment") is made and entered into by and between Amburgy Properties Caney, LLC, a Georgia limited liability company ("Assignor") and The Peachtree Bank, whose address is 9570 Medlock Bridge Road, Duluth, Georgia 30097 and its successors and assigns ("Assignee"), as of this 28th day of January, 2008.

RECITALS

WHEREAS, Assignor is the Declarant named in that certain Declaration of Covenants, Restrictions and Easements for StoneCrest at Johns Creek Subdivision dated 28 JAN 2008 and recorded in Forsyth County Records (the "Declaration"); and

WHEREAS, Assignee is the Grantee under those certain Deeds to Secure Debt and Security Agreements recorded at Deed Book 4518 page 337 and Deed Book 4915 page 393 and modified at Deed Book 4942 page 766 Forsyth County records, Georgia (collectively the "Security Deeds") encumbering the certain real property which is subject to the Declaration.

NOW, THEREFORE, in consideration of the recitals set forth above and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

Assignor hereby collaterally assigns, sets over and transfers to Assignee all of Assignor's right, interest and powers as Declarant under the Declarations as further security for the indebtedness secured by the Security Deeds; provided, however, that Assignee shall not be deemed, by virtue of said assignment, to have assumed any of the obligations of Assignor under the Declaration, which obligations Assignor covenants and agrees with Assignee to perform and observe as if this Assignment had not been made. Further, it is agreed that notwithstanding that this Assignment, unless and until there shall occur an Event of Default as defined in the Security Deeds or any other loan documents between Assignor and Assignee, Assignee shall not exercise its rights hereunder. Upon the occurrence of such Event of Default, Assignee shall be entitled to exercise any and all of such right, interest and powers under this Assignment. At such time as the Security Deed is cancelled this Assignment shall be of no further force and effect.

This Assignment may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

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IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the day and year first above written.

ASSIGNOR:

Signed, sealed and delivered
in the presence of:

Kurt Small
Unofficial Witness

Amburgy Properties Caney, LLC
a Georgia limited liability company

BY: *[Signature]* (SEAL)
TITLE: *Member*

Shary Copija
Notary Public
My commission expires:
[Notary Seal]

ASSIGNEE:

Signed, sealed and delivered
in the presence of:

Kurt Small
Unofficial Witness

The Peachtree Bank,

BY: *[Signature]* (SEAL)
TITLE: *Senior Vice President*

Shary Copija
Notary Public
My commission expires:
[Notary Seal]



After recording please return to:
Robin S. Phillips
Morris, Manning & Martin, L.L.P.
5775 C Peachtree Dunwoody Road
Suite 150
Atlanta, GA 30342
RE: StoneCrest at Johns Creek

Cross reference to: Deed to Secure Debt
in Deed Bk 4518, Pg 337, *et seq.* Deed to
Secure Debt in Deed Bk 4915, Pg 393, *et*
seq. Modification in Deed Bk 4942, Pg 766
et seq. & Declaration of Covenants,
Restrictions, and Easements in Deed Bk
~~5032~~, ~~335~~, *et seq.* all in Forsyth
County, Georgia records.

CONSENT AND JOINDER

THE PEACHTREE BANK (hereinafter "Lender") is the holder of that certain Deed to Secure Debt and Security Agreement between Amburgy Properties Caney, L.L.C. (hereinafter "Borrower") and Lender recorded in Deed Book 4518, Page 337, *et seq.*, that certain Deed to Secure Debt and Security Agreement between Borrower and Lender recorded in Deed Book 4915, Page 393 *et seq.* and that certain Modification between Borrower and Lender recorded in Deed 4942, Page 766 *et seq.* all in the Forsyth County, Georgia records as hereinafter modified, amended or restated (hereinafter "Security Deeds").

Lender, acting not as Declarant but in its limited capacity as holder of the Security Deeds, hereby consents to and joins in the execution and recording of the Declaration of Covenants, Restrictions and Easements for **STONECREST AT JOHNS CREEK** (hereinafter "Declaration") recorded in the deed book and page referenced in the upper right-hand corner above and all amendments thereto subsequently recorded. It is the intent and agreement of the Lender, and the effect of this instrument, that the Declaration not be terminated by a subsequent judicial or non-judicial foreclosure under the Security Deeds, but rather that the Declaration shall remain in full force and effect after such foreclosure. The execution by Lender of this Consent and Joinder shall not be deemed to diminish, impair, limit, repudiate or forgive any obligation of Borrower under the Security Deeds or any related loan documents and Borrower shall remain fully liable to Lender for the faithful performance of all obligations there under.

IN WITNESS WHEREOF, Lender has caused this instrument to be executed under seal by its duly authorized officers on this 30 day of January, 2008.

Signed and sealed
in the presence of this:
30 day of January, 2008.

Kelst Smell
Witness

Mary Copie
Notary Public
[NOTARY SEAL]

The Peachtree Bank, Lender

BY: Jammy Strauss

TITLE: Senior Vice President

[BANK SEAL]

