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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
BELMONT TRACE SUBDIVISION

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- TABLE OF CONTENTS -

ARTICLE	SECTION	PAGE
I.	DEFINITIONS	4
	1.01. Additional Property	4
	1.02. Association	4
	1.03. Board	4
	1.04. Bylaws	4
	1.05. Common Property	4 & 5
	1.06. Declarant	5
	1.07. Declaration	5
	1.08. Lot	5
	1.09. Member	5
	1.10. Owner	5
	1.11. Property	5
	1.12. Restrictions	5
	1.13. Structure	5
II.	COMMON PROPERTY	5
	2.01. Conveyance of Common Property	5 & 6
	2.02. Right of Enjoyment	6
	2.03. Rights of the Association	6 & 7
	2.04. Types of Common Property	7
	2.05. Entrance and Scenic Strip Landscaping Easements	7
	2.06. Encroachment Easements	7 & 8
	2.07. Easement for Maintenance by the Association	8
III.	THE HOMEOWNERS ASSOCIATION	8
	3.01. Purposes, Powers and Duties of the Association	8
	3.02. Membership in the Association	8
	3.03. Voting Rights	8 & 9
	3.04. Board of Directors and Officers	9
	3.05. Suspension of Membership	9 & 10
	3.06. Voting Procedures	10
	3.07. Control by Declarant and Appointment of the Board	10
	3.08. Implied Rights	10
IV.	ASSESSMENTS	10
	4.01. Covenant for Assessments and Creation of Lien and Personal Obligations	11
	4.02. Purpose of Assessment	11
	4.03. Accumulation of Funds Permitted	11 & 12
	4.04. Annual Assessment	12 & 13
	4.05. Special Assessments for Working Capital Fund, Nonrecurring Maintenance, and Capital Improvements	13
	4.06. Notice and Quorum	13
	4.07. Effect of Nonpayment of Assessments	13
	4.08. Certificate of Payment	13
V.	ARCHITECTURAL CONTROL	14
	5.01. Architectural Control Committee — Creation and Composition	14
	5.02. Purposes, Powers and Duties of the ACC	14
	5.03. Officers, Subcommittees and Compensation	14

ARTICLE	SECTION	PAGE
	5.04. Operations of the ACC	14 & 15
	5.05. Design Standards	16
	5.06. Submission of Plans and Specifications	16
	5.07. Approval of Plans and Specifications	16
	5.08. Disapproval of Plans and Specifications	16 & 17
	5.09. Obligation to Act	17
	5.10. Inspection Rights	17
	5.11. Violations	17
	5.12. Fees	17
	5.13. Disclaimer as to ACC Approval	17 & 18
	5.14. Declarant	18
VI.	GENERAL COVINAICS, USE RESTRICTIONS AND RULES	18
	6.01. Application	18
	6.02. Maintenance	18
	6.03. Use of Lots	19
	6.04. Resubdivision of Property	19
	6.05. Erosion Control	19
	6.06. Landscaping	19
	6.07. Trees	19
	6.08. Signs	19
	6.09. Setbacks	20
	6.10. Fences	20
	6.11. Roads and Driveways	20
	6.12. Antennas	20
	6.13. Clotheslines	20
	6.14. Front Yard Areas	20
	6.15. Recreational Vehicles and Trailers	20 & 21
	6.16. Recreational Equipment	21
	6.17. Animals	21
	6.18. Solid Waste	21
	6.19. Nuisances	21 & 22
	6.20. Exteriors	22
	6.21. Air conditioning Units	22
	6.22. Storm Doors and Windows	22
	6.23. Decorative Appurtenances	22
	6.24. Window Treatments	22
	6.25. Fuel or Water Tanks	22
	6.26. Exterior Lighting	22
	6.27. Swimming Pools	22
	6.28. Guns	22
	6.29. Mailboxes	22
	6.30. Developer's Activities	22
VII.	EASEMENTS, ZONING AND OTHER RESTRICTIONS	22 & 23
	7.01. Easements	23 & 24
	7.02. Easement Area	24
	7.03. Entry	24
	7.04. Zoning and Private Restrictions	24
	7.05. Sideyard Area	24 & 25 & 26
	7.06. Construction and Sale Period Easement	26
VIII.	ENFORCEMENT	26
	8.01. Right of Enforcement	26 & 27

ARTICLE	SECTION	PAGE
	8.02. Right of Abatement	27
	8.03. Specific Performance	27
	8.04. Collection of Assessments and Enforcement of Lien	27 & 28
	8.05. Fines	28
	8.06. No Waiver	28
IX.	DURATION AND AMENDMENT	29
	9.01. Duration	29
	9.02. Amendment	29
X.	ANNEXATION	29 & 30
	10.01. Additional Property	30
	10.02. Submission of Additional Property	30
	10.03. Conditions of Annexation	30 & 31
XI.	LEASES	31
	11.01. Application	31
	11.02. Required Lease Provisions	31 & 32
XII.	INSURANCE	32
	12.01. Insurance Policies	32
	12.02. Insurance Proceeds	32 & 33
	12.03. Other Insurance	33
XIII.	MISCELLANEOUS	33
	13.01. Other changes	33 & 34
	13.02. Rights of First Mortgagees	34
	13.03. Professional Management	34
	13.04. No Reverter	34
	13.05. Severability	34
	13.06. Headings	34
	13.07. Gender	34
	13.08. Notices	34 & 35
	13.09. No Liability	35
	13.10. Amendment by Board	35
	13.11. Failure of Mortgagee to Respond	35
	13.12. VA/HUD Approval	35
	13.13. Indemnification	35 & 36
	13.14. Variances	36
	Exhibit "A"	37

DECLARATION OF
COVENANTS, RESTRICTIONS AND EASEMENTS FOR
BELMONT TRACE SUBDIVISION

THIS DECLARATION is made on the date hereinafter set forth by
A.C.A. Properties, LLC, a Georgia Corporation (hereinafter referred to as "Declarant").

WITNESSETH

WHEREAS Declarant is the owner of certain real property located in Land
Lot 686, district 21, 2nd Section of Cherokee County, Georgia, which property is more particularly
described on Exhibit "A" attached hereto and made a part of this Declaration; and

WHEREAS, Declarant intends to develop on the real property described above a development to be known
as Belmont Trace Subdivision (hereinafter referred to as the "Development"); and

WHEREAS, Declarant has caused the Association (as hereinafter defined) to be formed as a non-profit civic
organization to perform certain functions for the common good and general welfare of the Owners (as
hereinafter defined);

NOW, THEREFORE, Declarant hereby declares that all of the property described on Exhibit "A" shall be
held, sold and conveyed subject to this Declaration of Covenants, Conditions and Restrictions, which is for
the purpose of enhancing and protecting the desirability and attractiveness of said real property. Declarant
further declares that this Declaration shall run with the title to said real property and be binding on all
parties having any right, title or interest in the described property or any part thereof, and shall, subject to
all limitations herein provided, inure to the benefit of each Owner, his heirs, grantees, distributees,
successors and assigns, and to the benefit of the Association.

ARTICLE I

DEFINITIONS

The following words, when used in this Declaration of Covenants, Conditions and Restrictions, shall have
the following meanings:

- 1.01. Additional Property. "Additional Property" means the additional property which may
added to the Property and made subject to this Declaration pursuant to Article X hereof.
A description of the Additional Property is set forth on Exhibit "B" attached hereto and
made a part hereof.
- 1.02. Association. "Association" means Belmont Trace Homeowners
Association, Inc. (a nonprofit corporation organized under the Georgia Nonprofit
Corporation Code), its successors and assigns.
- 1.03. Board. "Board" means the Board of Directors of the Association.
- 1.04. Bylaws. "Bylaws" means the Bylaws of the Association.
- 1.05. Common Property. "Common Property" means all real property (together with any and
all improvements now or hereafter located thereon) and all personal property now or
hereafter owned by the Association, or in certain instances over which the Association

has been granted permanent easements, for the common use and enjoyment of the Owners.

- 1.06. **Declarant.** "Declarant" means A.C.A. Properties, LLC, its successors and assigns. The Declarant shall have the right to assign to any person, firm or corporation any of its rights hereunder by written instrument recorded in the Clerk's Records of the Superior Court of Cherokee County as an addendum to this Declaration and in such an event the word Declarant shall specifically include such assignee to the extent the right of the Declarant has been assigned.
- 1.07. **Declaration.**
- 1.08. **Lot.** "Lot" means any parcel of land shown upon a subdivision plat recorded in the Office of the Clerk of the Superior Court of Cherokee County, covering any portion of the Property, provided, however, that no portion of the Common Property shall ever be a Lot except as provided in 2.01.
- 1.09. **Member.** "Member" means any member of the Association.
- 1.10. **Owner.** "Owner" means the record owner (including Declarant) whether one or more persons or entities, of a fee simple title to any Lot, provided, however, that where fee simple title has been transferred and is being held merely as security for the repayment of a loan, the person or entity who would own the Lot in fee simple if such loan were paid in full shall be considered the Owner.
- 1.11. **Property.** "Property" means that certain real property (other than Common Property) described in "Exhibit A".
- 1.12. **Restrictions.** "Restrictions" means all covenants, restrictions, easements, charges, liens and other obligations created or imposed by this Declaration.
- 1.13. **Structure.** "Structure" means:
 - (a) any thing or object the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration and not limitation, any building or part thereof, garage, porch, shed, greenhouse or bathhouse, coop or cage, covered or uncovered patio, swimming pool, fence, curbing, paving, wall, tree, shrub, sign, signboard, temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such Lot;
 - (b) any excavation, grading, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial creek, stream, wash or drainage channel from, upon or across any Lot; and
 - (c) any change in the grade at the point on a Lot of more than six (6) inches, whether or not subsection (b) of this Section 1.21 applies to such change.

ARTICLE II

COMMON PROPERTY

- 2.01. **Conveyance of Common Property.**

(a) The Declarant may from time to time convey to the Association or grant easements to the Association, at no expense to the Association and in accordance with this Section, real and personal property for the common use and enjoyment of the Owners of Residences (such real and personal property is hereinafter collectively referred to as "Common Property") and, to the extent set forth in this Declaration of Covenants, Restrictions and Easements, the general public. The Association hereby covenants and agrees to accept from the Declarant all such conveyances of Common Property.

(b) It is contemplated by the Declarant that the Declarant will convey to the Association Common Property for scenic and natural area preservation and for general recreational use to include facilities for swimming, tennis and exercise. The Declarant may, at Declarant's sole discretion, modify, alter, increase, reduce and otherwise change the Common Property contemplated to be conveyed to the Association in accordance with this subsection (b) of this Section 2.01 at any time prior to conveyance of such Common Property to the Association.

(c) In addition to the property described in subsection (b) of this Section 2.01, the Declarant may convey to the Association in accordance with this Section 2.01 such other real and personal property as the Declarant may determine to be necessary or proper for the completion of the Development.

(d) Notwithstanding any legal presumption to the contrary, the fee title to, and all rights in, any portion of the Property owned by the Declarant and designated as Common Property or designated for public use shall be reserved to the Declarant until such time as the same shall be conveyed to the Association or to any municipality or other governmental body, agency or authority.

2.02. Right of Enjoyment. Every Owner of a Residence shall have a right and easement to use and enjoy the Common Property, which right shall be appurtenant to and shall pass with the title to every Lot upon transfer; provided, however, that no Owner shall do any act which interferes with the free use and enjoyment of the Common Property by all other Owners. The Association may permit persons who are not Owners of Residences to use and enjoy part or all of the Common Property subject to such limitations, and upon such terms and conditions, as it may from time to time establish. The right and easement of enjoyment granted or permitted by this Section 2.02 is subject to suspension by the Association as provided in Sections 2.03 (f) and 3.05.

2.03. Rights of the Association. The rights and privileges conferred in Section 2.02 hereof shall be subject to the right, and where applicable, the obligation, of the Association acting through the Board to:

(a) promulgate rules and regulations relating to the use, operation and maintenance of the Common Property;

(b) borrow money for the purpose of carrying out the activities of the Association, including the acquisition, construction, improvement, equipping and maintenance of the Common Property, and in aid thereof to encumber by deed to secure debt, mortgage or other security interest any or all of the Association's Property including Common Property and revenues from assessments, user fees and other sources; and provided, however, that, during the period of time when the Declarant has the right to appoint members of the Board, the Association shall not deed, grant or convey to anyone any mortgage, deed to secure debt or other security interest on or in Common Property constituting real estate without approval by Declarant and a two-thirds (2/3) vote of the members who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the Bylaws of the Association;

(c) grant easements or rights of way over Common Property to any municipality or other governmental body, agency or authority, to any quasi-public agency or to any utility company or cable television system;

(d) dedicate or transfer all or any part of the Common Property or interest therein to any municipality or other government body, agency or authority for such purposes and subject to such provisions and conditions as may be agreed upon by the Association and such grantee, including a provision that such property or interest shall, if such dedication or transfer is approved by two-thirds (2/3) vote of the Members who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the Bylaws of the Association, cease to be subject to this Declaration or all or any part of the Restrictions while held by any such municipality or other governmental body, agency or authority;

(e) charge reasonable fees in connection with the admission to and use of facilities or services by Members and non-members; provided that in setting any such fee the Board may establish reasonable classifications which shall be uniform within each such class but need not be uniform between such classes.

(f) suspend, pursuant to Section 3.05, the voting rights of any Member and the right of enjoyment granted or permitted by Section 2.02;

(g) to sell, lease or otherwise convey all or any part of its properties and interests therein;

(h) enforce all applicable provisions of valid agreements of the Association relating to the Common Property or any part thereof; and

(i) perform all maintenance obligations of the Association with respect to the Common Property, and property and improvements previously installed by Declarant, as set forth in Section 2.07 below or elsewhere in this Declaration.

2.04. Types of Common Property. At the time of the conveyance of any real property or grant of easement by the Declarant to the Association to be used as Common Property, the Declarant shall designate in the deed of conveyance or easement that such real property is to be Common Property, and further may designate in the deed of conveyance or easement the specific or general purpose or purposes for which such real property or any portion thereof may be used, and in such event, such real property or portion thereof shall not, without a two-thirds (2/3) vote of the Members of the Association, be used for any different purpose or purposes without the prior written consent of the Declarant.

2.05. Entrance and Scenic Strip Landscaping Easements. The Declarant and its employees, agents, successors and assigns, shall have the right at all reasonable times to enter upon all parts of each Easement Area for any of the purposes for which such Easement Area is reserved, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and the carrying out of such purposes, provided the same are done in accordance with the provisions of this Section. The Declarant and its employees, agents, successors and assigns shall be responsible for leaving each Lot in good condition and repair following any work or activity undertaken in an Easement Area pursuant to the provisions in Section 7.01

2.06. Encroachment Easements. This Declaration and the Restrictions contained herein shall inure to the benefit of and shall be enforceable by the Declarant so long as it is an Owner, the Association, each Owner, his legal representatives, heirs, successors and assigns, and the Master Association.

Failure to comply with this Declaration and Restrictions contained herein, the Bylaws, the Rules and Regulations, use restrictions or Design Standards shall be grounds for judicial remedies pursuant to Section 8.03 below. In addition, the Board shall have the Right of Abatement pursuant to Section 8.02 below, and the right to impose fines or other sanctions, in accordance with the procedures set forth in the Bylaws, which fines shall be collected as provided herein for the collection of assessments. Failure by Board or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter.

2.07. Easement for Maintenance by the Association. There is hereby granted to the Association and its designated representatives an Easement across such portions of the Property, including, without limitation, the Lots, as determined in the sole discretion of the Association, as may be necessary to allow for the maintenance required of the Association hereunder.

ARTICLE III

THE HOMEOWNERS ASSOCIATION

3.01. Purposes, Powers and Duties of the Association. The Association shall be formed as a nonprofit civic organization for the primary purpose of performing certain functions for the common good and general welfare of its members. To the extent necessary to carry out such purpose, the Association (a) shall have all of the powers of a corporation organized under the Georgia Nonprofit Corporation Code, and (b) shall have the power to exercise all of the rights, powers and privileges of the Association as set forth in this Declaration.

3.02. Membership in the Association. Every Owner shall automatically be a Member of the Association and such membership shall terminate only as provided in this Declaration of Covenants, Conditions and Restrictions.

3.03. Voting Rights. Subject to the following provisions of this Section 3.03, the Association shall have two classes of voting membership: Class A and Class B.

(a) Class A. Every person or entity who is an Owner, with the exception of Declarant except as otherwise set forth herein, shall be a Class A Member and shall be entitled to one vote for each Lot owned. When more than one person or entity is a Class A Member by virtue of an ownership interest in the same Lot, the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. In the event of disagreement among such persons or entities and an attempt by two or more of them to cast the vote of such Lot, such persons or entities shall not be recognized and the vote of such Lot shall not be counted. The membership of a class A Member shall automatically terminate upon the Member's sale of his Lot. However, no termination of Class A membership shall affect such Member's obligation to pay assessments, fines or penalties as hereinafter provided for, due and payable for any period prior to the date of such termination, and there will be no refund for assessments paid for periods falling after the date of such termination.

(b) Class B. Declarant shall be the sole Class B Member. Class B membership shall be a full voting membership and during its existence the Class B Member shall be entitled to vote on all matters and in all events. The Class B Member shall be entitled to three (3) votes for each Lot owned by it; provided, however, in no event shall the Class B Member have less than the total number of Class A votes plus one (1). The Class B membership shall cease and shall be converted to Class A membership at such time as the first of the

following events occur: (a) the expiration of ten (10) years from the date of recording of this Declaration; (b) the date as of which three—fourths (3/4) of the Lots which may be developed on the Property and on the Additional Property shall have been conveyed to an individual Owner or Owners for residential occupancy; or (c) the surrender, in writing, by Declarant of the authority to appoint and remove members of the Board of the Association; provided, however, that so long as any mortgagee of Declarant holds a security interest in any portion of the Property, as security for a development loan to Declarant, the Class B membership shall not terminate without the prior written consent of such mortgagee. If at the time of termination of the Class B membership, Declarant still owns any Lots, then as to each Lot owned by Declarant, Declarant shall be deemed to be a Class A Member.

(c) The Development may be composed of Lots to be developed in phases containing unequal numbers of Lots. Each such phase will be platted of record in the office of the Clerk of the Superior Court of Cherokee County, Georgia in accordance with Article X of this Declaration. Declarant shall notify the Association in writing when the final phase of the Development has been so platted of record. By acceptance of a deed conveying a Lot, each Owner acknowledges that, upon the filing by Declarant of the subdivision plats covering such phases, the total votes outstanding in the Association will automatically increase based upon the number of Lots in the phases added and in accordance with the formula set forth in subsection (b) of this Section 3.03 and in no event shall Class B Membership cease and be converted to Class A Membership (as provided in subsection (b) of this Section 3.03) until after the Association receives the written notice provided for in the preceding sentence; provided, however, nothing contained herein shall obligate Declarant to develop any proposed phase of the Development unless such phase is subject to this Declaration.

3.04. **Board of Directors and Officers.**

(a) **Board.** The affairs of the Association shall be managed by a Board of Directors. the number of directors and the method of election of directors shall be as set forth in this Declaration and in the Bylaws of the Association. Except to the extent otherwise expressly required or authorized by the Georgia Nonprofit Corporation Code, this Declaration, or the Association's Bylaws or Articles of Incorporation, the powers inherent in or expressly granted to the Association may be exercised by the Board, acting through the officers of the Association, without any further consent or action on the part of the Members.

(b) **Officers.** The number of officers and the method of election of officers shall be as set forth in this Declaration and the Bylaws of the Association. Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation of the Association, or in the Bylaws, officers of the Association shall be appointed or elected by the Board.

(c) **Casting of Votes.** The votes of the Members shall be cast under such rules and procedures as may be prescribed in this Declaration or in the Bylaws of the Association, as amended from time to time, or by law.

3.05. **Suspension of Membership.** The Board may suspend the voting rights of any Member and the right of enjoyment of the Common Property of any person who:

(a) shall be subject to the Right of Abatement, as defined in Section 8.02, by reason of having failed to take the reasonable steps to remedy a violation or breach of either the Restrictions or the Design Standards (as herein defined) of the ACC (as herein defined) within thirty (30) days after having received notice of the same pursuant to the provisions of sections 5.11, 6.02 or 8.02 hereof;

- (b) shall be delinquent in the payment of any assessment, fine or penalty levied by the Association pursuant to the provisions of this Declaration; or
- (c) shall be in violation of the rules and regulations of the Association relating to the use, operation and maintenance of Common Property.

Any suspension shall be for the balance of the period in which said Member or person shall remain in violation, breach or default, as aforesaid, except that in the case of a violation described in subsection (c) of this section 3.05, the suspension may be for a period not to exceed 60 days after the cure or termination of such violation. No such suspension shall prevent an Owners ingress to or egress from his Lot.

- 3.06. Voting Procedures. The procedures for the election of the Board and the resolution of such other issues as may be brought before the membership of the Association shall be governed by this Declaration, the Georgia Nonprofit Corporation Code, the Articles of Incorporation of the Association, and the Bylaws, as each shall from time to time be in force and effect.
- 3.07. Control by Declarant and Appointment of the Board. Until such time as Declarant no longer has the right to appoint members to the Board, the Board of the Association shall consist of three (3) members. Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation of the Association, or in the Bylaws, Declarant hereby retains the right to appoint all members to the Board. The rights of Declarant to appoint members of the Board also includes the right to remove and replace appointees until such time as Declarant's rights to appoint members to the Board ceases. Declarant shall retain the right to appoint and remove members of the Board until such time as the first of the following events shall occur: (i) the expiration of ten (10) years from the date of the recording of this Declaration; (ii) the date upon which three-fourths (3/4) of the Lots which may be developed on the Property and on the Additional Property shall have been conveyed to an individual owner or Owners for residential occupancy; or (iii) the surrender, in writing, by Declarant of the authority to appoint and remove members of the Board of the Association. Upon the final expiration of all rights of Declarant to appoint and replace directors of the Association, a special meeting of the Association shall be called. At such special meeting the Owners shall elect a new Board of Directors which shall undertake the responsibilities of the Board, and Declarant shall deliver the books, accounts, and records, if any, which Declarant has kept on behalf of the Association, and any agreements or contracts executed by or on behalf of the Association during such period which Declarant has in its possession. Each Owner, by acceptance of the deed to or other conveyances of a Lot, vests in Declarant such authority to appoint and replace directors and officers of the Association as provided in this Section.
- 3.08. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law and any other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

ARTICLE IV

ASSESSMENTS

4.01. Covenant for Assessments and Creation of Lien and Personal Obligations. Each Owner, jointly and severally, for himself, his heirs, distributees, legal representatives, successors, and assigns, by acceptance of a deed for a Lot, whether or not the covenants contained herein shall be expressed in any such deed, hereby covenants and agrees as follows:

(a) to pay to the Association the annual assessments which may or shall be levied by the Association pursuant to this Declaration against all Lots owned by him;

(b) to pay to the Association any special assessments for capital improvements and any fines, penalties or other charges which may or shall be levied by the Association pursuant to this Declaration against all Lots owned by him;

(c) that there is hereby created a continuing charge and lien upon all Lots owned by him against which all assessments, fines, penalties and other charges are made to secure payment of such items and any interest thereon as provided in section 4.07 hereof and costs of collection, including, without limitation, reasonable attorneys' fees actually incurred;

(d) that such continuing charge and lien on such Lots binds such Lots in the hands of the then Owner, and the Owner's heirs, devisees, legal representatives, successors and assigns. Such charge and lien is superior to any and all charges, liens, or encumbrances which may hereafter in any manner arise or be imposed upon such Lots whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, except (i) such liens for taxes or other public charges as are by applicable law made superior, and (ii) the lien of any first mortgage. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer;

(e) that no sale or transfer at foreclosure or in lieu of foreclosure shall relieve any Lot or Lots from liability for any assessment thereafter assessed;

(f) that all annual and special assessments (together with interest thereon as provided in Section 4.07 of this Declaration and costs of collection including reasonable attorneys' fees actually incurred) levied against any Lot or Lots owned by him during the period that he is an Owner shall be (in addition to being a continuing charge and lien against such Lot or Lots as provided in Section 4.01(c) of this Declaration) a personal obligation which will survive any sale or transfer of the Lot or Lots owned by him; provided, however, that such personal obligation for delinquent assessments shall not pass to an Owner's successor in title unless expressly assumed by such successor.

4.02. Purpose of Assessment. The assessments levied by the Association shall be used exclusively for the purpose of providing for the common good and general welfare of the Members of the Association, including, but not limited to, and in addition to other purposes set forth in this Declaration, the acquisition, construction, improvement, maintenance and equipping of Common Property, the enforcement of the Restrictions contained in this Declaration, the enforcement of the Design standards (as herein defined) of the ACC (as herein defined), the payment of operating costs and expenses of the Association, and the payment of all principal and interest when due on all debts owned by the Association.

4.03. Accumulation of Funds Permitted. The Association shall not be obligated to spend in any calendar year all the sums collected in such year by way of annual assessments or otherwise, and may carry forward, as surplus, any balances remaining; nor shall the Association be obligated to apply such surplus to the reduction of the amount of the assessments in any succeeding year, but may carry forward from year to year such

surplus as the Board may deem to be desirable for the greater financial security of the Association and the effectuation of its purposes.

4.04. Annual Assessment.

(a) Subject to the terms of this Article, each Lot in the Property is hereby subjected to an annual assessment which assessment will be paid by the owner or Owners of each Lot within the Property (and any area annexed under the jurisdiction of the Association). Payment of such assessments will be made in advance in monthly, quarterly or annual installments with the due dates being established by the Board of Directors.

(b) The annual assessment will commence as to a Lot on the first day of the month following the earlier to occur of the following events: (i) upon the occupancy of the Lot as a residence; or (ii) upon the conveyance of the Lot to an Owner or tenant for residential occupancy.

(c) Beginning on the date this Declaration is recorded through December 31, 2005, the annual assessment per Lot will not exceed \$350.00 per annum (said rate of charge being the maximum annual assessment for 2005). Beginning January 1, 2006, and from year to year thereafter, the maximum annual assessment may be increased by the Board of Directors; however, the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum annual assessment for the previous year without a vote of the membership, which shall require approval of two-thirds (2/3) of each class of Members present, in person or by proxy, at a meeting duly called for such purpose, with at least sixty percent (60%) of the Owners or other proxies present. If sixty percent (60%) of the Owners do not attend, a second meeting may be called and the quorum will be reduced to thirty percent (30%) of the Owners or their proxies. The annual assessment for each year shall be determined by the Board of Directors as the needs of the Development may in the judgment of the Board require; however, the annual assessment for each year shall not exceed the maximum annual assessment set for that year. If not increased as provided herein, the maximum annual assessment for each successive year shall equal the maximum annual assessment in effect for the previous year. In addition, if for any reason the Board of Directors fails to determine the annual assessment for any successive year, the annual assessment for the previous year shall continue for such successive year until a new annual assessment is determined by the Board of Directors.

(d) Assessments may be used by the Association to provide for, by way of clarification, and not limitation, any and/or all of the following as determined, from time to time, by the Board of Directors: normal, recurring maintenance of the Common Property (including, but not limited to, mowing, edging, watering, clipping, sweeping, pruning, raking and otherwise caring for the existing landscaping) and the acquisition and installation of capital improvements to the Common Property, such as sprinkler systems, provided that the Association shall have no obligation (except as expressly provided hereinafter) to make capital improvements to the Common Property; normal, recurring maintenance of the front yards of the lots up to the side yard fences (including, but not limited to, mowing, edging, and otherwise caring for the existing landscaping but not including the replacement of plant materials); the cost of hazard and liability insurance for the Common Property and the cost of such other insurance as the Association may deem necessary; the cost of water, electricity, street lights, and other utilities to the Common Property; payment of all legal and other expenses incurred in connection with the enforcement of all recorded covenants, restrictions, and conditions affecting the Property to which said assessments apply; payment of all reasonable and necessary expenses in connection with the collection and administration of assessments; payment of ad valorem property taxes assessed against the common Property (in the event the Association is dissolved or for any reason fails to pay such taxes or other obligations hereunder, such shall become the obligation of the Members of the Association to

the extent of their percentage interest in the Association); employment of security guards or watchmen, if determined necessary; caring for vacant Lots; maintaining the sanitary sewer pipes, cleanouts, backflow preventers, and any and all such devices that may be used to connect each residence with the public sewer system located in the street right-of-way; and doing any other thing or things necessary or desirable in the opinion of the Board or membership of the Association to keep the Property neat and in good order, or which is considered of general benefit to the Owners or occupants of the Property, it being understood that when and if presented to the Members the judgment of the majority of the Members of the Association in the determination of what constitutes normal, recurring maintenance shall be final and conclusive so long as such judgment is exercised in good faith. The Association shall also establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Property.

(e) Unless required as a matter of law or as otherwise set forth in this Article, Declarant shall not, at any time, be subject to assessment; however,

4.05. Special Assessments for Working Capital Fund, Nonrecurring Maintenance, and Capital Improvements. In addition to the annual assessments authorized by this Article IV, the Association may levy, in any Assessment Year and with such frequency as the Association shall deem necessary, special assessments for the purpose of paying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement on the Common Property, or special assessments for the purposes set forth in Section 12.01. Such special assessments may be levied by the Board in any Assessment Year without the approval of the members, which special assessments in the aggregate do not exceed an amount equal to the annual assessment then in effect. Special assessments exceeding said amount shall have been approved by a two-thirds (2/3) vote of the Members of the Association who are present in person or by proxy at a meeting of Members duly held in accordance with the provisions of the Bylaws of the Association and this Declaration.

4.06. Notice of Quorum.

4.07. Effect of Nonpayment of Assessments. Any assessment which is not paid on or before the Due Date shall bear interest after the Due Date at the lower of the highest legal rate of interest which can be charged or the rate of eighteen per cent (18%) per annum or at such rate as the Board may from time to time establish, provided, however, that in no event shall the Board have the power to establish a rate of interest in violation of the Laws of the State of Georgia. In the event of default in the payment of any one or more installments of an assessment, the Board may declare any remaining balance of the assessment at once due and payable. In the event that an Owner shall fail to pay fully any portion of assessment prior to the date on which payment is due, such unpaid portion (including any remaining balance declared immediately due and payable in accordance with the preceding sentence), together with interest and costs of collection including reasonable attorney's fees, shall be a binding personal obligation of such Owner, as well as a lien on such Owner's Lot enforceable in accordance with the provisions of this Declaration.

4.08. Certificate of Payment. Upon written demand by an Owner, the Association shall within a reasonable period of time issue and furnish to such Owner a written certificate stating that all assessments (including penalties, interest and costs, if any) have been paid with respect to any Lot owned by said Owner as of the date of such certificate, or that all assessments, interest and costs have not been paid setting forth the amount then due and payable. The Association may make a reasonable charge for the issuance of such certificate. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter there in stated as between the Association and any bona fide purchaser of, or lender on, the Lot in question.

ARTICLE V

ARCHITECTURAL CONTROL

5.01. Architectural Control Committee — Creation and Composition.

(a) An Architectural Control Committee (the "ACC") shall be established consisting of at least one (1) but no more than five (5) individuals; provided, however, that the ACC shall always have an uneven number of members. Notwithstanding anything to the contrary contained herein, Declarant shall have the right, but not the obligation, to appoint all members of the ACC until the plans for all the Residences for all the Lots in the Development have been approved by the ACC. Thereafter, the Board shall appoint the members of the ACC. All costs of operating the ACC shall be borne by the Association. The members of the ACC need not be Owners as long as Declarant has the right to appoint the members.

(b) Each initial member of the ACC shall be appointed for a term expiring on December 31 of their first year. Thereafter each member of the ACC shall be appointed for a calendar—year term. If any vacancy shall occur in the membership of the ACC by reason of death, incapacity, resignation, removal or otherwise, the remaining members of the ACC shall continue to act and such vacancy shall be subject to the provisions of 5.01 (a) and be filled by the Declarant (or Board if at the time the Board has the right to appoint members of the ACC) at the earliest possible time. Any ACC member may resign at any time by giving written notice of such resignation to the Chairman of the ACC and such resignation shall take effect on receipt thereof by the Chairman. Any member of the ACC may be removed at any time with or without cause by the Declarant (or Board if at the time the Board has the right to appoint members to the ACC).

5.02. Purpose, Powers and Duties of the ACC. The purpose of the ACC is to assure that any installation, construction or alteration of any Structure on any Lot shall be submitted to the ACC for approval (i) as to whether the proposed installation, construction or alteration is in conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the standards of the Development of Belmont Trace, and (ii) as to the locations of Structures with respect to topography, finished ground elevation and surrounding Structures. To the extent necessary to carry out such purpose, the ACC shall have all of the powers and duties to do each and every thing necessary, suitable, convenient or proper for, or in connection with, or incidental to, the accomplishment of such purpose, including, without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any Structure on any Lot.

5.03 Officers, Subcommittees and Compensation. The members of the ACC shall appoint a Chairman from among their number and may appoint from among their number such other officers and subcommittees of members of the ACC as they shall from time to time determine necessary. The members of the ACC shall be reimbursed by the Association for traveling expenses and other out-of-pocket costs incurred in the performance of their duties as members of the ACC.

5.04 Operations of the ACC.

(a) Meeting. The ACC shall hold regular meetings at least once every three (3) months or more often as may be established by the ACC. Special meetings may be called by the

Chairman and shall be called by the chairman upon the written request of a majority of the members of the ACC then in office. Regular and special meetings of the ACC shall be held at such time and at such place as the ACC shall specify. Notice of each regular or special meeting of the ACC shall be mailed to each member thereof at his residence or at his usual place of business at least three (3) days before the day the meeting is to be held. Notice of regular and special meetings need not specify the purpose or purposes for which the meeting is called. Notice of a meeting need not be given to any member of the ACC who signs a waiver of notice either before or after the meeting. Attendance of a member of the ACC at a meeting shall constitute a waiver of notice of such meeting and shall constitute a waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened, except when the member states, at the beginning of the meeting, any such objections or objections to the transaction of business. At each meeting of the ACC, the presence of a majority of the members then in office shall constitute a quorum for the transaction of business. Except as otherwise provided herein, the act of a majority of the members of the ACC present at any regular or special meeting thereof at which a quorum is present shall constitute the act of the ACC. In the absence of a quorum, any member of the ACC present at the time and place of the meeting may adjourn the meeting from time to time until quorum shall be present. At any adjourned meeting at which a quorum is present, any business may be transacted at the meeting as originally called. The ACC shall maintain both a record of votes and minutes for each of its meetings. The ACC shall make such records and minutes available at reasonable places and times for inspection by Members of the Association and by the Secretary. Any action required to be taken at a meeting of the ACC, or any action which may be taken at a meeting of the ACC, may be taken without a meeting if written consent, setting forth the action so taken, shall be signed by all the members of the ACC and be filed within the minutes of the proceedings of the ACC. Such consent shall have the same force and effect as a unanimous vote, and stated as such in any document filed by the ACC.

(b) Activities.

(i) The ACC shall adopt and promulgate the Design Standards described in Section 5.05 hereof and shall, as required, make findings, determinations, rulings, and orders with respect to the conformity with said Design Standards of Plans and Specifications to be submitted for approval to the ACC pursuant to the provisions of this Declaration. Said Design Standards shall be consistent with the community-wide standard set forth in the Declaration. The ACC shall, as required, issue permits, authorizations or approvals, which may include specified requirements or conditions pursuant to the provisions of this Declaration.

(ii) Any two (2) or more members of the ACC may be authorized by the ACC to exercise the full authority of the ACC with respect to all matters over which the ACC has authority as may be specified by resolution of the ACC, except with respect to the adoption or promulgation of the Design Standards. The unanimous action of the two (2) or more members with respect to the matter specified shall be final and binding upon the ACC and upon any applicant for an approval, permit or authorization, subject, however, to review and modification by the ACC on its own motion or appeal by the Applicant to the ACC as provided in this paragraph (ii). Written notice of the decision of such two (2) or more members shall, within five (5) working days thereof, be given to any Applicant for an approval, permit or authorization. The Applicant may, within ten (10) days after receipt of notice of any decision which he deems to be unsatisfactory, file a written request to have the matter in question reviewed by the ACC. Upon filing of any such request, the matter with respect to which such request was filed shall be submitted to, and reviewed promptly by, the ACC, but in no event later than thirty (30) days after the filing of such request. The decision of a majority of the members of the ACC with respect to such matter shall be final and binding.

5.05. Design Standards.

(a) The ACC may from time to time adopt, promulgate, amend, revoke and enforce guidelines (the design Standards) for the purposes of:

- (i) governing the form and content of plans and specifications to be submitted to the ACC for approval pursuant to the provisions of this Declaration;
- (ii) governing the procedure for such submission of plans and specifications;
- (iii) establishing guidelines with respect to the approval and disapproval of design features, architectural styles, exterior colors and materials, details of construction, location and size of Structures and all other matters that require approval by the ACC pursuant to this Declaration; and
- (iv) assuring the conformity and harmony of external design and the general quality of the Development.

(b) The ACC may publish copies of its current Design Standards, in which case they shall be made readily available to Members and prospective Members of the Association and to all applicants seeking the ACC's approval.

5.06 Submission of Plans and Specifications. No Structure shall be commenced, erected, placed, moved onto or permitted to remain on any Lot, nor shall any existing Structure upon any Lot be altered in any way which materially changes the exterior appearance of the Structure or Lot, unless plans and specifications therefore shall have been submitted to and approved in writing by the ACC. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the ACC.

5.07 Approval of Plans and Specifications. Upon approval by the ACC of any plans and specification submitted pursuant to this Declaration, two (2) copies of such plans and specifications, as approved, shall be deposited for permanent record with the ACC and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same. Approval for use in connection with the Lot or Structure of any plans and specifications shall not be deemed a waiver of the ACC's right, in its discretion, to disapprove similar plans and specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Lot or Structure. Approval of any such plans and specifications relating to any Lot or Structure, however, shall be final as to that Lot or Structure and such approval may not be revoked or rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specifications, as approved, and any conditions attached to any such approval.

5.08 Disapproval of Plans and Specifications. The ACC shall have the right to disapprove any plans and specifications submitted pursuant to this Declaration for any of the following reasons:

- (a) the failure to include information in such plans and specifications as may have been reasonably requested;
- (b) the failure of such plans or specifications to comply with this Declaration or any Design Standards promulgated by the ACC; or

(c) any other matter which, in the judgment of the ACC, would be likely to cause the proposed installation, construction or alteration of a Structure (i) to fail to be in conformity and harmony of external design and general quality with the standards of the Development, or (ii) as to location, to be incompatible with topography, finished ground elevation and surrounding Structures. In any case in which the ACC shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. In any such case the ACC shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal may be prepared and submitted for approval.

5.09. Obligation to Act. The ACC shall take action on any plans and specifications submitted as herein provided within thirty (30) days after receipt thereof. Approval by the ACC, if granted, together with any conditions imposed by the ACC, shall be placed in writing on the plans and specifications and shall be returned to the applicant. Failure by ACC to take action within thirty (30) days of receipt of plans and specifications submitted for approval shall be deemed approval of such plans and specifications. However, any activities commenced pursuant to such plans and specifications which have been deemed approved shall be consistent with such plans and specifications

5.10. Inspection Rights. Any employee or agent of the Association or the ACC may, after reasonable notice, at any reasonable time or times enter upon any Lot or Structure thereon for the purpose of ascertaining whether the installation, construction, alteration or maintenance of any Structure or the use of any Lot or Structure is in compliance with the provisions of this Declaration; and neither the Association, nor the ACC, nor any such agent shall be deemed to have committed a trespass or other wrongful act solely by reason of such entry or inspection provided such inspection is carried out in accordance with the terms of this Section.

5.11. Violations. If any Structure shall be erected, placed, maintained or altered upon any Lot, otherwise than in accordance with the plans and specifications approved by the ACC pursuant to the provisions of this Article, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If in the opinion of the ACC such violation shall have occurred, the ACC shall notify the Association. If the Board shall agree with the determination of the ACC with respect to the violation, then the Board shall provide written notice to the owner by certified mail, setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation. If the Owner shall not have taken reasonable steps toward the required remedial action within thirty (30) days after the mailing of the aforesaid notice of violation, then the Association shall, in addition to the other remedies provided in this Declaration for a violation thereof, have the Right of Abatement as provided in section 8.02 hereof.

5.12. Fees. The ACC may impose and collect a reasonable and appropriate fee to cover the cost of inspections performed pursuant to Section 5.10. The fee shall be established from time to time by the ACC and may be published in the Design standards.

5.13. Disclaimer as to ACC Approval. Plans and specifications are not reviewed for engineering or structural design or quality of materials, and by approving such plans and specifications neither the ACC, the members thereof, nor the Association assumes liability or responsibility therefore, nor for any defect in any structure constructed from such plans and specifications. Neither Declarant, the Association, the ACC, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval or

to any owner of property affected by these Restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications and every Owner agrees that he will not bring any action or suit against Declarant, the Association, the ACC, the Board, or the officers, directors, members, employees, and agents of any of them to recover any such damages and hereby releases, remises, quitclaims and covenants not to sue for connection with any judgment, negligence, or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

5.14. Declarant. The provisions contained in this Article, as well as all other architectural control provisions contained in this Declaration or any Design standards promulgated by the ACC, shall not apply to Declarant. This Section 5.14 may only be amended with the prior written consent of Declarant.]

ARTICLE VI

GENERAL COVENANTS, USE RESTRICTIONS AND RULES

6.01. Application. The covenants and restrictions contained in this Article VI shall pertain and apply to all Lots and to all Structures erected or placed thereon.

6.02. Maintenance. Except as provided for in Section 4.04(d) of this Declaration, each Owner shall keep and maintain such Owner's Lot, the exterior of the dwelling and all Structures owned by him, as well as all landscaping located thereon, in good condition and repair, including, but not limited to (i) the repairing and painting (or other appropriate external care) and otherwise caring for the dwelling and all other Structures; (ii) the seeding, fertilizing and watering of all lawns and mowing, edging, clipping, sweeping, pruning, raking and otherwise caring for all lawns not maintained by the Association; (iii) the pruning and trimming of all trees, hedges and shrubbery not maintained by the Association so that the same are not obstructive of a view by motorists or pedestrians of street traffic; (iv) the maintenance of any Sideyard Area (as herein defined) that may exist on the Owner's Lot as provided for in Section 7.05 of this Declaration; and (v) the maintenance, repair and painting of all fences on the Lot. Expenses for the maintenance, repair and painting of fences located on a common rear property line will be shared by the Owners of the respective Lots. If, in the opinion of the ACC, any Owner shall fail to perform the duties imposed by this Section, the ACC shall notify the Association. If the Board shall agree with the determination of the ACC with respect to the failure of said Owner to perform the duties imposed by this Section, then the Board shall give written notice to the Owner to remedy the condition in question, setting forth in reasonable detail the nature of the condition and the specific action or actions needed to be taken to remedy such condition. If the owner shall fail to take reasonable steps to remedy the condition within thirty (30) days after the mailing of said written notice by certified mail, then the Association shall, in addition to other remedies provided in this Declaration for a violation thereof, have the Right to Abatement as provided in Section 8.02 hereof. Guidelines relating to the maintenance of Structures, Sideyard Areas (as herein defined) and landscaping may be included in the Design standards of the ACC.

6.03. Use of Lots. Lots may be used for single-family residences only and for no other purpose provided that Declarant may operate a sales office and/or model home and construction trailer on a Lot or Lots designated by Declarant. No activity, trade, business or profession which is prohibited by any applicable law or ordinance shall be conducted on any Lot. In no event shall any child care facility, beauty shop or barber shop be operated upon any Lot. No other activity, trade, business or profession in which customers or clients frequently come to the place of business or in which there are frequent pickups or deliveries or other regular traffic shall be conducted or operated upon any Lot, regardless of whether any such activities are permitted by applicable laws and ordinance B.

6.04. Re-subdivision of Property. No Lot may be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise, without the prior written approval of the ACC of plans and specifications for such split, division or subdivision except, however, Declarant shall have the right without the consent of other Owners or the ACC to subdivide or re-subdivide Lots owned by Declarant.

6.05. Erosion Control. No activity which may create erosion or siltation problems shall be undertaken on any Lot without the prior written approval of the ACC of plans and specifications for the prevention and control of such erosion or siltation. The ACC may, as a condition or approval of such plans and specifications require the use of certain means of preventing and controlling such erosion or siltation.

6.06. Landscaping. No construction or alteration of any Structure shall take place without the prior written approval by the ACC of plans and specifications for the landscaping to accompany such construction or alteration.

6.07. Trees. No living tree having a diameter of six (6) inches or more (measured from a point two (2) feet above ground level) shall be removed from any Lot unless such removal is in conformity with approved landscaping plans and specifications submitted pursuant to the provisions of section 6.06 hereof.

6.08. Signs.

(a) No signs whatsoever (including, but not limited to, commercial and similar signs) shall, without the ACC's prior written approval of plans and specification therefore, be installed, altered or maintained on any Lot, or on any portion of a Structure visible from the exterior thereof except:

(i) such signs as may be required by legal proceedings

(ii) not more than one "For Sale" or "For Rent" sign, such sign having a maximum face area of one square foot may be placed in the front yard area parallel to the curb (facing the street); provided, however, that if, at the time of any desired use of such sign, the Association, is making "For Sale" or "For Rent" signs available for the use of Owners, the signs made available by the Association must be used;

(iii) directional signs for vehicular or pedestrian safety in accordance with plans and specifications approved by the ACC; and

(iv) such signs that Declarant may deem necessary to advertise the Development and to promote the Sale of Lots and homes in Belmont Trace Subdivision.

(b) In no event during approved construction of any Structure shall more than one job identification sign be approved by the ACC. Except as may be provided in the Design Standards, no "Sold" sign shall at any time be installed or maintained on any Lot or on any portion of the Structure visible from the exterior thereof, except by Declarant in building out the community.

6.09 Setbacks.

(a) Each dwelling which is erected on a Lot shall be situated on such Lot in accordance with the building and setback line shown on the recorded plat, and in no event shall any dwelling be erected upon any Lot in any manner which violates such building and setback lines. For purposes of this requirement, all porches, patios, decks, shutters, awnings, eaves, gutters and other overhangs will not be considered in violation thereof, even though such structure shall extend beyond said building and setback lines, if approved by the ACC. Notwithstanding the foregoing, Declarant shall have the right to obtain variances on a Lot or Lot setback requirements or change them if Declarant deems necessary to do so.

(b) In approving plans and specifications for any proposed Structure, the ACC may establish setback requirements for the location of such Structure. No Structure shall be erected or placed on any Lot unless its location is consistent with such setbacks.

6.10. Fences. No fence or wall of any kind shall be erected, maintained, or altered on any Lot without the prior written approval of the ACC of plans and specifications for such fences and walls. Fences erected at the rear yards shall be in conformance with the approved fencing plan. No fences or walls shall be permitted in the front yards except such fences or walls used for decorating or ornamental purposes installed by Declarant. Any fences connecting dwellings which were originally erected by Declarant for side yard privacy shall not be removed destroyed or altered and shall be maintained in good condition and repair by the Owner thereof. Fences must be constructed to permit reasonable access to utilities and the Sideyard Area (as herein defined) or they must have gates to allow initial construction of a dwelling and must conform to the same style as that of the connecting fence at the time of construction. Side yard trellises shall not have solid roofs over them unless permitted by the ACC.

6.11. Roads and Driveways. No road or driveway shall be constructed or altered on any Lot without the prior written approval of the ACC of plans and specifications for such roads and driveways.

6.12. Antennas. No exterior antennas of any kind, including, without limitation, satellite dishes, shall be placed, allowed, or maintained upon any portion of the Developments including any Lot, without the prior written consent of the ACC. However, the Board shall have the right (but shall not be obligated) to erect a master antenna, satellite dish or other similar master system for the benefit of the entire Development. Each Owner and occupant of a Lot acknowledges that this provision benefits all Owners and occupants of Lots and each Owner and occupant of a Lot agrees to comply with this provision despite the fact that the erection of an outdoor antenna or similar device would be the most cost effective way to transmit or receive the signals sought to be transmitted or received.

6.13. Clotheslines. No clotheslines shall be permitted.

6.14. Front Yard Areas. The front yard areas shall be kept neat and clean. All equipment, garbage cans, and woodpiles shall be kept in the garage or screened by adequate planting or approved fencing so as to conceal them from view by neighboring residences and streets.

6.15. Recreational Vehicles and Trailers. No school bus, truck or commercial vehicle over one (1) ton capacity, house trailer, mobile home, motor home, recreational vehicle, camper, truck with camper top, motorcycle, all terrain vehicle, habitable motor vehicle of any kind, boat or boat trailer, trailers of any kind, or like equipment shall be permitted on any Lot; provide; however, any such vehicle, boat or trailer will be permitted if stored within

the garage with the garage door closed. Vehicles of any type shall not be parked on any subdivision street for periods of more than twenty four (24) continuous hours (the intent of this provision is that vehicles may not be parked or stored on subdivision streets except on a temporary basis and the temporary removal of a vehicle from a subdivision street to break the continually of the twenty four (24) consecutive hours shall not be sufficient to establish compliance with this restriction). No inoperable or junked motor vehicles shall be parked or stored upon any portion of the property for more than ten days except in an enclosed garage with the garage door closed. No dismantling or major overhaul or repair of a motor vehicle (such as dismantling or removal of the engine or transmission or removal of the hood, any fender or any door) shall be performed upon any portion of the property except in an enclosed garage. Any trash, firewood, wood scraps or building materials contained in any vehicle or trailer shall be covered from view. The provisions of this Section shall not apply to Declarant while constructing a Structure on any Lot. Vehicles shall not be parked on any street within the community. Vehicles shall not be parked on the Common Property or any portion of a lot other than the driveway and the garage. No commercial vehicles of any type which advertise the business of the owner by either painted on or magnetized signs are allowed to be parked in any driveway or in street in front of houses for a period of more than two (2) hours. The intention is to allow people of these vehicles to park only for visits or lunch breaks, but not allow vehicles to be parked overnight or more than two (2) hours. These vehicles are only allowed if parked in a closed garage.

- 6.16. Recreational Equipment. Recreational and playground equipment shall not be placed or installed in the front or Side yard Area (as herein defined) and may only be placed in the rear of a Lot as approved by the ACC.
- 6.17. Animals. No animals, including birds, insects, and reptiles may be kept on any Lot unless kept thereon solely as household pets and not for commercial purposes. No animal shall be allowed to become a nuisance. No breed of dogs or other animals shall be allowed on any Lot which breed is by nature dangerous. No Structure for the care, housing or confinement of any animal shall be constructed, placed or altered on any Lot unless plans, specifications and location for said Structure have been approved by the ACC.
- 6.18. Solid Waste.
 - (a) No person shall dump or burn rubbish, garbage, or any other form of solid waste on any Lot or on Common Property except Declarant during development and construction of the Development.
 - (b) Except for building materials employed during the course of construction of any Structure approved by the ACC, no lumber, metals, bulk materials or solid waste of any kind shall be kept, stored, or allowed to accumulate on any Lot unless screened or otherwise handled in a manner approved by the ACC or set forth in the Design standards.
 - (c) If rubbish, garbage, or any other form of solid waste is to be disposed of by being collected on a regular and recurring basis, containers may be placed in the open on any day that a pick up is to be made in order to provide access to persons making such pick-up. At all other times such containers shall be screened or enclosed.
- 6.19. Nuisances. It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly or unkept condition of his or her Lot. No Lot shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any Lot that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb

the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may cause embarrassment, discomfort, annoyance, or nuisance to any person using any property adjacent to the Lot. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence is noxious, dangerous, unsightly, and unpleasant or of a nature as may diminish or destroy the enjoyment of the Development.

- 6.20. Exteriors. Declarant will color coordinate certain exterior materials on the dwellings as they are built. As these products need replacing, repairing or repainting, the original colors and type of materials must be used or colors and materials as near the original as possible may be substituted providing the original is not readily available. Exterior trim and garage trim shall be white or as originally installed. Siding and roofing colors and design shall remain as similar as possible to the original, painted and unpainted fences connecting the dwellings shall remain the same type and color as the original.
- 6.21. Air Conditioning Units. No window air conditioning units shall be placed in any dwelling.
- 6.22. Storm Doors and Windows. No storm doors or storm windows of any kind shall be installed on any dwelling without the prior written consent of the ACC.
- 6.23. Decorative Appurtenances. Any decorative appurtenances such as sculptures, bird baths, bird houses, fountains, gazebos or other decorative embellishments which are visible from the street are subject to approval by the ACC. No plastic animal decorations such as pink flamingos, etc. are permitted on any Lot, at any time.
- 6.24. Window Treatments. No foil or other reflective materials shall be used on any windows for sunscreens, blinds, shades or for any other purpose.
- 6.25. Fuel or Water Tanks. No fuel tanks or water tanks shall be stored or maintained upon any Lot in such a manner as to be visible from any street or road or from any other Lot, unless used by Declarant, temporarily, in the ordinary course of developing the Property.
- 6.26. Exterior Lighting. No colored lights shall be used on any portion of a Lot or Structure except that decorative holiday lighting and ornamentation will be permitted during the holiday season from the week of Thanksgiving through New Year's Day.
- 6.27. Swimming Pools. No above ground swimming pools shall be permitted. No in ground pools shall be installed on any dwelling without the prior written consent of the ACC.
- 6.28. Guns. The use of firearms in the Development is prohibited. The term "firearms" includes "BB" guns, pellet guns, paintball guns, airsoft guns and small firearms of all types.
- 6.29. Mailboxes. All mailbox structures will be standardized and must be repainted and/or replaced with the same color and style as used by Declarant in the original installation.
- 6.30. Developer's Activities. Nothing herein shall be construed to prohibit Declarant from developing, building and marketing new homes in the Development as it usually does in the ordinary course of its business.

ARTICLE VII

ARTICLE VII

EASEMENTS, ZONING AND OTHER RESTRICTIONS

7.01. Easements.

(a) Declarant hereby expressly reserves to Declarant, its successors and assigns forever, the right to create perpetual easements in, on, over and under any part of the Property owned by Declarant for any purpose which Declarant deems necessary, including, by way of example, and not limitation, the following:

- (i) the erection, installation, construction and maintenance of wires, lines, conduits and poles and the necessary or proper attachments in connection with the transmission of electricity, telephone, cable television and other utilities and similar facilities;
- (ii) the erection, installation, construction and maintenance of storm water drains, land drains, public and private sewers, irrigation systems, pipelines for supplying gas, water and heat, and for any other public or quasi-public facility, service or function;
- (iii) slope control purposes, including the right to grade and plant slopes and to prevent the doing of any activity which might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow;
- (iv) the planting or replanting of hedges, shrubbery, bushes, trees, flowers and plants of any nature; and
- (v) the erection, installation, construction and maintenance of fences, walls, monuments, signs, etc, along streets in, around and along, and at entrances to, the Development, and the right to landscape such areas, plant, replant and prune hedges, shrubbery, bushes, trees, flowers, grass and plants of any nature.

(b) No Owner shall have any right to use any easement created by Declarant in, on or over any portion of the Property unless such easement has been assigned by Declarant to the Association.

(c) Declarant hereby reserves for itself, its successors and assigns, across the property described on Exhibit "A" is Declaration, and across each portion of the Additional property subsequently submitted to this Declaration by annexation as provided in Article X hereof perpetual easements appurtenant to all or any portion of the Additional Property not subject to this Declaration for the following uses and purposes:

- (i) an easement for ingress and egress by vehicular and pedestrian traffic over (1) such drives, roadways, walkways and paths as are shown on the plat or plats recorded in connection with the property described on Exhibit "A" of this Declaration and such portions of the Additional Property as are submitted to this Declaration, and (2) such drives, roadways, walkways and paths as may be constructed in the future; and
- (ii) an easement for the purpose of installing, operating, maintaining and replacing wires, pipes, conduits and other structures and facilities necessary to the furnishing of gas, water, sewage, storm drainage, electricity, street lights, cable television, telephone, and other utilities and services, including the right to use in common with the Owners of the property described on Exhibit "A" of this Declaration and portions of the Additional Property subsequently submitted to this Declaration, the wires, pipes, conduits, and other structures and facilities furnishing such utilities and services to such Owners.

(d) In addition to the above, Declarant hereby grants a general easement in favor of utility, cable television and other such service companies across the property described on Exhibit "A" of this Declaration, and across each portion of the Additional Property subsequently submitted to this Declaration by annexation as provided in Article X hereof, to maintain, repair, replace and service wires, pipes, conduits, street lights and other structures and facilities provided for the benefit of the Owners.

(e) Declarant hereby reserves for the benefit of the Owner of each Lot, from time to time, a perpetual, non-exclusive easement appurtenant to and running with title to each Lot for access, ingress and egress over and across an adjoining Lot. Although perpetual, this easement may only be utilized over each Lot for the benefit of an adjoining Lot upon which improvements are under construction and shall be limited to a 10-foot wide strip located contiguous to the common boundary line between such Lots. Notwithstanding the provisions of this subsection, this easement does not prohibit the construction of improvements within such 10 foot wide strip and shall not be utilized in any manner that damages or destroys such improvements. Any Owner who utilizes this easement agrees that upon completion of the improvements, such Owner shall return the Lot over which this easement was utilized to its condition as it existed immediately prior to such use.

(f) The easements created in this Article VII are in addition to any easements or rights created elsewhere in this Declaration or in other easements of record. The provisions of this Article VII may not be amended without the written consent of Declarant, its successors and assigns.

7.02. Easement Area. The words "Easement Area" as used herein shall mean those areas on any Lot with respect to which easements are shown on a recorded deed or grant of easement, or on any filed or recorded map or plat relating thereto, or as otherwise set forth in Sections 7.01 and 7.05.

7.03. Entry. Declarant and its employee, agents, successors and assigns, shall have the right at all reasonable times to enter upon all parts of each Easement Area for any of the purposes for which such Easement Area is reserved without being deemed to have committed a trespass or wrongful act solely by reason of such entry and the carrying out of such purposes. Declarant and its employees, agents, successors and assigns shall be responsible for leaving each Lot in good condition and repair following any work or activity undertaken by the same in an Easement Area pursuant to the provisions of Sections 7.01 and 7.05.

7.04. Zoning and Private Restrictions. None of the covenants, restrictions or easements created or imposed by this Declaration shall be construed as permitting any action prohibited by applicable zoning laws, or by the laws, rules or regulations of any governmental body. In the event of any conflict between such laws, rules or regulations and the covenants, restrictions and easements, created or imposed by this Declaration, the most restrictive provision shall govern and control.

7.05. Sideyard Area.

(a) Statement in Intent. As provided below, Declarant intends that each Owner shall be restricted to using its Three Foot Use Area for maintenance purposes only and shall have a limited maintenance easement over the contiguous Four Foot Use Area. Declarant also intends that each Owner shall be allowed to use its Four Foot Use Area for any purpose not restricted hereby and shall have a full use and enjoyment easement over the contiguous Three Foot Use Area. In other words, Declarant intends that all such Lots have the right to the full use and enjoyment of the Sideyard Area on the side of the house

where the patio is located, but be limited to using the Sideyard Area on the other side of the house for maintenance purposes.

(b) Easements.

(i) Reservation of Maintenance Easement. Declarant, as the owner of each Lot, hereby reserves unto the Owner of each Lot a nonexclusive easement of access, ingress and egress over the Four Foot Use Area on the Lot adjoining the Three Foot Use Area located on such Lot for the purpose of entering the Four Foot Use Area at reasonable times and under reasonable circumstances to construct, reconstruct, maintain and repair its Lot and the improvements located thereon (hereinafter referred to as the "Maintenance Easement"). Such easement shall be appurtenant to and run with title to each Lot for the benefit of the Owner, from time to time, of such Lot, but shall not be sold, mortgaged, leased or otherwise granted or conveyed separate and apart from such Lot.

(ii) Reservation of Use and Enjoyment Easement. Declarant, as the owner of each Lot, hereby reserves unto the Owner of each Lot a nonexclusive easement of access, ingress and egress over the Three Foot Use Area on the Lot adjoining the Four Foot Use Area located on such Lot for the purpose of fully using and enjoying such Three Foot Use Area in any manner permitted by this Declaration including such purposes as landscaping, fencing, general recreation, access, drainage and other visual, aesthetic and recreational purposes (hereinafter referred to as the "Use Easement") such easement shall be appurtenant to and run with title to each Lot for the benefit of the Owner, from time to time, of such Lot, but shall not be sold, mortgaged, leased or otherwise granted or conveyed separate and apart from such Lot. Notwithstanding the foregoing, each Owner shall not place any Structures within such Three Foot Use Area on an adjacent Lot in such a manner or such a location that the Structure would unreasonably interfere with the construction, reconstruction, maintenance or repair of any wall, fence or the dwelling lying on the adjacent Lot, as provided in Section 7.05 (b) (i) above. If any such Structure interferes with the Owner of the adjacent Lots ability to construct, reconstruct, maintain or repair its Lot and the improvements located thereon, then the Owner of the adjacent Lot shall not be liable for any damage to such Structure which occurs in the course of such permitted work.

(c) Use Restrictions.

(i) Restrictions on Four Foot Use Area. Each Owner may utilize its fee simple title to the Four Foot Use Area for any purpose not restricted by this Declaration, including such purposes as landscaping, fencing, general recreation, access, drainage and other visual, aesthetic and recreational purposes.

(ii) Restrictions on Sideyard Area. Each Owner shall not (1) suffer or permit any waste upon the Sideyard Area; (2) undertake any use of or affix any object to any wall, fence or other structure on an adjacent Lot; (3) undertake any grading that would tend to prevent proper drainage of the Sideyard Area, or to promote soil erosion or to undermine support for the foundation of any wall, fence or other structure on an adjacent Lot; (4) place or permit the accumulation of any soil or fill material against any wall, fence or other structure on an adjacent Lot to a height which exceeds original grade; (5) cause, suffer or permit any damage to any utility lines located within the Sideyard Area or interrupt or interfere with the maintenance and repair thereof; (6) construct, erect or install any structure upon, across, over, under or within the Sideyard Area or undertake any grading or fill or any other activity upon the Sideyard Area which violates any applicable governmental statute, ordinance, rule or regulation or the provisions of this Declaration; (7) stack wood or permit trees, shrubbery or other vegetation to grow on the Sideyard Area which would cause damage to or interfere with the maintenance and repair of any wall, fence or the dwelling on an adjacent Lot; (8) cause or permit any offensive contact

(including without limitation, any pounding or bouncing of objects) with any wall of the swelling on an adjacent Lot; (9) suffer or permit upon the Sideyard Area any activities by household pets or other animals which would tend to cause damage to or undermine support for any wall, fence or other structure on an adjacent Lot; or (10) cause or permit to exist any open, uncontained fire on the Sideyard Area.

(d) Maintenance. Each Owner shall maintain the Sideyard Area that consists of the Four Foot Use Area located on its Lot and the Three Foot Use Area that is adjacent to the Four Foot Use Area located on its Lot at its sole cost and expense.

(e) Disputes. In the event that a dispute arises concerning the respective rights and obligations of the Owners of contiguous Lots pursuant to this Section 7.05, then the Association shall act as arbitrator of said dispute and may enforce the Association's decision in accordance with the provisions of Section 6.02 of this Declaration.

7.06. Construction and Sale Period Easement. Notwithstanding any provisions contained in this Declaration, the Bylaws, the Articles of Incorporation of the Association, use restrictions, rules and regulations. Design standards, and any amendments thereto, until Declarant's right unilaterally to subject property to this Declaration as provided in Article X terminates and thereafter so long as Declarant owns any property in the Development for development and/or sale, Declarant reserves an easement across all property for Declarant and any builder or developer approved by Declarant to maintain and carry on, upon such portion of the property as Declarant may reasonably deem necessary, such facilities and activities as in the sole opinion of Declarant may be required, convenient, or incidental to Declarant's and such builder's or developer's development, construction, and sales activities related to property described on Exhibit "A" and Exhibit "B" of this Declaration, including, but without limitation: the right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in the property including, without limitation, any Lot; the right to tie into any portion of the property with driveways, parking areas and walkways; the right to tie into and/or otherwise connect and use (without a tap—on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Property; the right to grant easements over, under, in or on the Property, including, without limitation, the Lots, for the benefit of neighboring properties for the purpose of tying into and/or otherwise connecting and using sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Property; the right to carry on sales and promotional activities on the Property and the right to construct and operate business offices, signs, construction trailers, model residences, and sales offices. Declarant and any such builder or developer may use residences, offices, or other buildings owned or leased by Declarant or such builder or developer as model residences and sales offices without charge. Rights exercised pursuant to such reserved easements shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the person causing the damage at its sole expense. This Section shall not be amended without Declarant's express written consent until Declarant's rights hereunder have terminated as hereinabove provided.

ARTICLE VIII

ENFORCEMENT

8.01. Right of Enforcement. This Declaration and the Restrictions contained herein shall inure to the benefit of and shall be enforceable by (i) the Declarant so long as it is an Owner, (ii) the Association, (iii) each Owner, his legal representatives, heirs, successors and assigns.

Failure to comply with this Declaration and the Restrictions contained herein, the By-Laws, the rules and regulation, use restrictions or Design Standards shall be grounds for judicial remedies pursuant to Section 8.03 below. In addition, the Board shall have the Right of Abatement pursuant to Section 8.02 below, and the right to impose fines or other sanctions, in accordance with the procedures set forth in the By-Laws.

8.02. Right of Abatement.

(a) Except where different notice provisions are provided in Sections 5.11 and 6.02, in the event of a violation or breach of any Restriction contained in this Declaration the Association shall give written notice by certified mail to the owner setting forth in reasonable detail the nature of such violation or breach and the specific action or actions needed to be taken to remedy such violation or breach. If the Owner shall fail to take reasonable steps to remedy such violation or breach within ten (10) days after the mailing of said written notice, then the Association shall have the Right of Abatement.

(b) The Right of Abatement, as used in this Section and in Sections 5.11 and 6.02 hereof, means the right of the Association, through its agents and employees, to enter at all reasonable times upon any Lot and Structure, as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove, or repair such violation, breach or other condition which may exist thereon contrary to the provisions hereof, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and such actions, provided such entry and such actions are carried out in accordance with the provisions of this Section, and with the cost thereof including the costs of collection including reasonable attorney's fees, together with interest thereon at the lower of the highest rate permitted by Law or 18%, to be a binding personal obligation of such Owner enforceable in law, as well as a lien on such Owner's Lot enforceable pursuant to the provisions of Section 8.04 hereof. Such lien shall be superior to any and all charges, liens or encumbrances which may in any manner arise or be imposed upon the Lot after such entry whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, excepting only (i) such liens for taxes or other public charges as are by applicable law made superior, (ii) the liens created by Section 4.01 hereof and (iii) all deeds to secure debt given to secure a loan the proceeds of which are used (1) to purchase a lot or lots (together with any and all Structures which may from time to time be placed or located thereon) and (2) to finance the construction, repair or alteration of Structures.

8.03. Specific Performance. Nothing contained in this Declaration shall be deemed to affect or limit the rights of the Declarant, the Association or any Owner to enforce the Restrictions by appropriate judicial proceedings or to recover damages. However, it is hereby declared that it may be impossible to measure accurately in money the damages which will accrue to a beneficiary hereof, its transferees, successors or assigns, by reason of a violation of, or failure to perform any of the obligations provided by, this Declaration; and therefore, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

8.04. Collection of Assessments and Enforcement of Lien.

(a) If any assessment, interest, cost, fine or other charge is not paid as required by this Declaration, the Association may bring either an action at law against the Owner

personally obligated to pay the same, or an action to foreclose any lien created by his Declaration against the Lot or Lots subject to the lien, or both, for the purpose of collecting such assessments, cost or charge, plus any interest thereon and costs of collection, including reasonable attorney's fees.

(b) As an additional remedy, but in no way as a limitation on the remedies, if any assessment, interest, cost or other charge is not paid as required by this Declaration, each Owner hereby grants to the Association and its assigns the following irrevocable power of attorney: To sell the said Lot or Lots subject to the lien at auction, at the usual place for conducting sales at the court House in Cherokee County, Georgia, to the highest bidder for cash, after advertising the time, terms and place of such sale once a week for four weeks immediately preceding such sale (but without regard to the number of days) in the paper in which the Sheriff's advertisements for Cherokee County, Georgia are published, all other notice being hereby waived by each owner, and the Association or any person on behalf of the Association, or assigns, may bid and purchase at such sale and thereupon execute and deliver to the purchaser or purchasers at such sale a conveyance of said property in fee simple, which conveyance shall contain recitals as to the happenings of the default upon which the execution of the power of sale herein granted depends, and each Owner hereby constitutes and appoints the Association and assigns, the agent and attorney in fact of each Owner to make such recitals, and hereby covenants and agrees that the recitals so to be made by the Association, or assigns, shall be binding and conclusive upon the Owner whose property is the subject matter of such sale, and the heirs, executors, administrators and assigns of such Owner, and that the conveyance to be made by the Association or assigns, shall be effectual to bar all equity of redemption of such Owner, or the successors in interest of such Owner, in and to said Lot or Lots, and the Association or assigns shall collect the proceeds of such sale, and after reserving there from the entire amount of assessment, interest, cost or other charge due, together with all costs and expenses of sale and fifteen per cent of the aggregate amount due for attorney's fees, shall pay any excess to such Owner, or to the heirs or assigns of such Owner as provided by law. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise and are granted as cumulative to the remedies for collection of said indebtedness provided by law.

(c) WAIVER. EACH OWNER, BY ACCEPTANCE OF A DEED CONVEYING A LOT SUBJECT TO THIS DECLARATION, WAIVES ANY RIGHT WHICH OWNER MAY HAVE UNDER THE CONSTITUTION OR THE LAWS OF THE STATE OF GEORGIA OR THE CONSTITUTION OR THE LAWS OF THE UNITED STATES OF AMERICA TO NOTICE OR TO A JUDICIAL HEARING PRIOR TO THE EXERCISE OF ANY RIGHT OR REMEDY PROVIDED BY THIS DECLARATION AND OWNER WAIVES OWNER'S RIGHTS, IF ANY, TO SET ASIDE OR INVALIDATE ANY SALE DULY CONSUMMATED IN ACCORDANCE WITH THE PROVISIONS OF THIS DECLARATION ON THE GROUND (IF SUCH BE THE CASE) THAT THE SALE WAS CONSUMMATED WITHOUT A PRIOR JUDICIAL HEARING. ALL WAIVERS BY OWNER IN THIS PARAGRAPH HAVE BEEN MADE VOLUNTARILY, INTELLIGENTLY AND KNOWINGLY, AFTER OWNER HAS FIRST BEEN ALLOWED THE OPPORTUNITY TO CONSULT LEGAL COUNSEL WITH RESPECT TO OWNER'S POSSIBLE RIGHTS,

- 8.05. Fines. The Board shall have the power to impose reasonable fines which shall constitute an equitable charge and a continuing lien upon a member's lot and to suspend a member's right to vote and/or any member's right to use the recreational facilities located on the Common Property for violation of any duty imposed under the Declaration, these Bylaws or any rules and regulations duly adopted hereunder.
- 8.06. No Waiver. The failure of the Declarant, the Association, or the Owner of any Lot, his or its respective legal representatives, heirs, successors and assigns, to enforce any

Restrictions herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to any violation or breach occurring prior or subsequent thereto.

ARTICLE IX

DURATION AND AMENDMENT

9.01. **Duration.** The provisions of this Declaration shall run with and bind title to the Property, shall be binding upon and inure to the benefit of all Owners and Mortgagees and their respective heirs, executors, legal representatives, successors and assigns, and shall be and remain in effect for a period of twenty (20) years from and after the date of the recording of this Declaration, provided that rights and easements which are stated herein to have a longer duration shall have such longer duration. This Declaration may be renewed for an unlimited number of successive twenty (20) year periods in accordance with the terms and provisions of O.C.G.A. Section 44-5-60(d). Every purchaser or grantee of any interest in the Property, by acceptance of a deed or other conveyance therefore, thereby agrees that the provisions of this Declaration shall run with and bind title to the Property as provided hereby, including any extension and renewal of this Declaration in accordance with the terms and provisions of O.C.G.A. Section 44-5-60 (d).

9.02. **Amendment.** During any period in which Declarant retains the right to appoint and remove any directors and officers of the Association, Declarant may amend this Declaration by an instrument in writing filed and recorded in the Land Records of the Superior Court of Cherokee County, Georgia, without the approval of any Member or mortgagee; provided, however, that (i) in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of such Owner's Lot or of the Common Property as set forth in this Declaration or if such Amendment adversely affects the title to any Lot, such Amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Members affected thereby, or (ii) in the event that such amendment would materially and adversely affect the security title and interest of any mortgagee, such amendment shall be valid only upon the written consent thereto of all such mortgagees so affected. Any amendment made pursuant to this section 9.02 shall be certified by Declarant as having been duly approved by Declarant, and such Members and mortgagees if required, and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself. Each Owner, by acceptance of a deed or other conveyance to a Lot, agrees to be bound by such amendments as are permitted by this Section 9.02 and further agrees that, if requested to do so by Declarant, such Owner will consent to the amendment of this Declaration or any other instruments relating to the Development (i) if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots subject to this Declaration, (iii) if such amendment is required by an institutional or governmental lender or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any Lot subject to this Declaration, (iv) if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots subject to this Declaration or (v) if such amendment is necessary to correct a scrivener's error in drafting of this Declaration, or (vi) if such amendment is necessary to correct an inconsistency or discrepancy between this Declaration and the Master Declaration.

ARTICLE X

ANNEXATION

- 10.01. Additional Property. So long as Declarant owns at least one (1) Lot held primarily for sale, or has an unexpired option to add Additional Property to the Property, Declarant may amend this Declaration unilaterally to include additional property in the definition of Additional Property.
- 10.02. Submission of Additional Property. Declarant shall have the option and right from time to time, without the necessity of consent by the Association, the Board or the Owners, but subject to section 10.03 of this Article, to submit all or portions of the Additional Property to this Declaration and thereby to cause the Additional Property, or such portions thereof as may be submitted, to become part of the Property. This option may be exercised by Declarant in accordance with the conditions and limitations set out in this Article, which are the only conditions and limitations on such right.
- 10.03. Conditions of Annexation. Any annexation as permitted in Section 10.02 of this Article shall be in accordance with the following terms and conditions.
 - (a) Declarant's option to submit portions of the Additional Property may be exercised at any time and from time to time until ten (10) years from the date this Declaration is recorded; provided, however, that the Owners of Lots to which two-thirds of the Class A votes in the Association appertain, exclusive of any vote or votes appurtenant to Lots then owned by Declarant, may consent to the extension of such option by vote taken not more than one (1) year prior to the date upon which such option will expire.
 - (b) Portions of the Additional Property may be added at different times, and there are no limitations fixing the boundaries of those portions or regulating the order in which any such portions may become part of the Property.
 - (c) All Lots created on portions of the Additional Property which are added to the Property will be restricted exclusively to residential use, in accordance with Article VI of this Declaration, unless otherwise used as Common Property.
 - (d) The option reserved by Section 10.02 of this Article may be exercised by Declarant alone (without the consent of the Association or any Owner) by the execution by Declarant of an amendment to this Declaration which shall be filed for record in the Office of the Clerk of the Superior Court of Cherokee county, Georgia together with a plat of that portion of the Additional Property which is to become part of the Property by reason of such amendment. Such plat shall indicate the boundaries of that portion of the Additional Property which is to become part of the Property, the boundaries of all Lots to be located therein, and an identifying number for each such Lot. Any such amendment shall expressly submit that portion of the Additional Property which is to become part of the Property, and upon the exercise, if any, of such option, the provisions of this Declaration shall be understood and construed as embracing all of the Property, including the property described on Exhibit "A" to this Declaration and such portions of the Additional Property as have become part of the Property by annexation.
 - (e) In addition to the procedure outlined in subparagraph (d) above, the option reserved by Section 10.02 of this Article may be exercised with respect to any portions of the Additional Property, notwithstanding that such portions of the Additional Property may be owned by persons, including any individual, individuals, corporations, partnerships or any other type of entity; other than Declarant. Declarant shall exercise this option by an

amendment to this Declaration which shall be filed for record in the Office of the Clerk of the Superior Court of Cherokee County, Georgia, together with a plat of that portion of the Additional Property which is to become part of the Property by reason of such amendment. Such plat shall indicate the boundaries of that portion of the Additional Property which is to become part of the Property, the boundaries of all Lots to be located thereon, and an identifying number for each such Lot. Any such amendment shall contain a statement consenting to the annexation of any such Additional Property, together with a reference to a declaration (citing the specific Deed Book and Page in which such declaration is recorded) executed by the owner or owners thereof submitting such portions of the Additional Property to this Declaration. Upon the exercise of the foregoing procedure, the provisions of this Declaration shall be understood and construed as embracing all of the Property including the property described on Exhibit "A" of this Declaration and such portions of the Additional Property as have become part of the Property by annexation in this manner.

(f) From and after the date of annexation of any portion of the Additional Property, each Lot so added to the Property and the Owners thereof, shall have the same vote, shall share the same obligations and responsibilities, and shall have the same rights and privileges accorded every other Lot previously comprising part of the Property. Upon annexation of each portion of the Additional Property, as herein provided, the Association shall be deemed to have assumed, automatically, and without the necessity of consent by the Association, the Board or any individual Owner, the covenants to maintain the Common Property and the other obligations imposed by this Declaration, as amended from time to time, with respect to that portion of the Additional Property which is then the subject of annexation.

(g) Each Owner, by acceptance of a deed to a Lot in the Property, and the Association, shall be deemed to have approved annexation in the manner provided in this Article X.

ARTICLE XI

LEASES

11.01. Application. In order to assure a community of congenial Owners and thus protect the value of Lots, the leasing of a Lot, or any portion thereof, by any Owner (other than as provided herein for certain mortgagees and Declarant) shall be subject to the provisions contained in this Article so long as the Property is subject to the Restrictions.

11.02. Required Lease Provisions. All leases and lessees are subject to the provisions of the Declaration and Bylaws. No dwelling situated upon the Property shall be leased for transient or hotel purposes or in any event for a period less than six (6) months, except by Declarant in conjunction with a contract of sale. The Owner must make available to the tenant a copy of this Declaration. Any leases of a Lot, or a portion thereof, shall be deemed to contain the provisions of this Article whether or not said provisions are expressly stated therein, and each Owner covenants and agrees that any lease of his Lot shall contain the language of said provisions, and further, that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant on the Lot. Any lessee, by occupancy of a Lot, agrees to the applicability of this covenant and its incorporation as part of the lease along with the following provisions:

(a) In order to enforce those provisions made for the benefit of the Association, the Association may bring an action against Lessee for recovery of damages or for injunctive relief, or may impose any other sanctions authorized by the Declaration and Bylaws, as

they may be amended from time to time, or which may be available at law or equity, including but not limited to, all remedies available to a landlord upon breach or default of a lease agreement by a lessee. Failure by the Association to enforce any of its rights shall in no event be deemed a waiver of the right to do so thereafter.

(b) Lessee shall comply strictly with all provisions of the Declaration, Bylaws, and with the administrative rules and regulations adopted pursuant thereto, as any of the foregoing may be lawfully amended from time to time. Lessee shall control the conduct of his or her family and guests in order to assure compliance with the foregoing and shall indemnify and hold the lessor and the Association harmless for any such person's failure to comply. Lessee acknowledges that the violation by lessee or any occupant or person living with lessee of any provisions of the Declaration, Bylaws, or rules and regulations adopted thereunder shall constitute a default under the lease. Lessee further acknowledges that the Association has the right to act on its own behalf, or where necessary on behalf of the lessor, as the lessor's attorney—in—fact, to seek any remedies which are available to a landlord upon breach or default of a lease agreement by lessee.

The provisions of this Article shall not apply to any institutional mortgagors of any Lot which come into possession of such Lot as or result of a foreclosure sale or other judicial sale or as a result of any other proceeding in lieu of foreclosure.

ARTICLE XII

INSURANCE

12.01. Insurance Policies.

(a) At all time during the term of this Declaration, the Association, its successors and assigns, shall be required to keep any and all improvements located on the Common Property fully insured by a reputable insurance company authorized to transact business in the State of Georgia with (i) fire, vandalism, malicious mischief and extended coverage insurance in an amount adequate to cover the cost or replacement of such improvements in the event of loss of any and/or all of such improvements, fixtures and contents thereof; and (ii) public liability insurance in such amounts as shall be determined by the Board of Directors as appropriate for the type of activities which shall be allowed on the Common Property. Any such policies of insurance shall require that the certificate holders and insured be given thirty (30) days prior written notice of any cancellation of such policies.

(b) The insurance coverage with respect to the Common Property shall be written in the name of, and the proceeds thereof shall be payable to, the Association. Premiums for all insurance carried by the Association shall be included in the annual assessments made by the Association. All insurance policies shall be reviewed at least annually by the Board in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the property which may have been damaged or destroyed.

12.02. Insurance Proceeds.

(a) Immediately after the damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or

reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty.

(b) Any damage or destruction shall be repaired or reconstructed, unless, within sixty (60) days after the casualty, at least seventy-five percent (75%) of the total Association vote entitled to vote thereon, and, so long as Declarant has the right to appoint and remove directors, Declarant otherwise agree. If, for any reason, either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed one hundred and twenty (120) days. No mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

(c) If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Association's Members, levy a special assessment. Additional assessments may be made in a like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited for the benefit of the Association.

(d) In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Community in a neat and attractive condition.

(e) The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the persons who are responsible hereunder for maintenance of the damaged or destroyed property.

12.03. Other Insurance In addition to the coverage described hereinabove, the Association shall obtain such additional amounts and types of insurance as the Board shall deem necessary from time to time, including, without limitation, directors and officers' liability insurance or such insurance as may be required from time to time, by either the Federal Home Loan Mortgage Corporation, U.S. Department of Veterans Affairs ("VA") or U.S. Department of Housing and Urban Development ("HUD"), their successors and assigns, for similar type residential subdivision communities.

ARTICLE XIII

MISCELLANEOUS

13.01. Other Changes. Notwithstanding any other provisions herein which may be construed to the contrary, unless at least two-thirds (2/3) of the first mortgagees (based upon one vote for each first mortgage owned) or Owners (other than Declarant) of the individual Lots have given their prior written approval, the Association shall not be entitled to:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Property owned, directly or indirectly, by such Association (the granting of

easements for public utilities or for other public purposes consistent with the intended use of such common area or property by the Association shall not be deemed a transfer within the meaning of this clause);

- (b) change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;
- (c) fail to maintain fire and extended coverage on insurable Association Common Property, if any, on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurance value (based on current replacement cost);
- (d) use hazard insurance proceeds for losses to any Association Common Property for other than the repair, replacement or reconstruction of such property.

13.02. Rights of First Mortgagees.

- (a) First mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Association's Common Property and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy, for such Common Property and first mortgagees making such payments shall be owed immediate reimbursement therefore from the Association. Despite any other provision of this Declaration which may be interpreted otherwise, it is expressly intended that no Owner or any other party have priority over any rights of the first mortgagee of a Lot pursuant to its mortgage or security deed in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Association Common Property.
- (b) In addition to the rights of mortgagees elsewhere provided, each first mortgagee of a Lot, upon request, shall (i) be entitled to written notice from the Association of any default in the performance of his obligations under the Development documents of an Owner which is not cured within sixty (60) days; (ii) be entitled to attend and observe all meetings of Owners, but not meetings of the Board; (iii) be furnished copies of annual financial reports made to the Owners; (iv) be entitled to inspect the financial books and records of the Association during reasonable business hours; and (v) be entitled to timely written notice of any proposed action which would require the consent of a specified percentage of eligible mortgagee.

13.03. Professional Management. Any agreement for professional management of the Association, or any other contract providing for services of Declarant, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days written notice. -

- 13.04. No Reverter. No restriction herein is intended to be or shall be construed as, a condition subsequent or as creating a possibility of reverter.
- 13.05. Severability. A determination by a court that any provision hereof is invalid for any reason shall not affect the validity of any other provision hereof.
- 13.06. Headings. The headings of the Articles and Sections hereof are for convenience only and shall not affect the meaning or interpretation of the contents of this Declaration.
- 13.07. Gender. Throughout this Declaration, the masculine gender shall be deemed to include the feminine and neuter, and the singular, the plural, and vice versa.
- 13.08. Notices. All notices, requests, objections, waivers, rejections, agreements, approvals, disclosures or consent of any kind made pursuant to this Declaration, whether made by

Declarant, the Association, the ACC, the Owner, or any other person, shall be in writing. All such writings shall be deposited in the United States Mail, with sufficient postage, and sent to the following addresses:

- (a) Declarant: A.C.A. Properties, LLC
3138 Saint Ives Country Club Parkway
Duluth, Georgia 30097
- (b) Owners: Each Owner's address as registered with the Association in accordance with the Bylaws.

Any written communication transmitted in accordance with this Section 13.08 shall be deemed received on the third (3rd) day following the day such written notice is deposited in the United States Mail.

- 13.09. No Liability. Declarant has, using best efforts and all due diligence, prepared and recorded this Declaration so that each and every Owner shall have the right and the power to enforce the terms and provisions of this Declaration against every other owner. However, in the event that this Declaration is, for any reason whatsoever, unenforceable by an Owner (Or any other person) in a court of law or otherwise, Declarant shall have no liability of any kind as a result of such unenforceability, and each and every Owner, by acceptance of a deed conveying a Lot, acknowledges that Declarant shall have no such liability.
- 13.10. Amendment by Board. Should the VA, HUD, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate certain provisions of this Declaration or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Declaration to be recorded to reflect such changes.
- 13.11. Failure of Mortgagee to Respond. Any mortgagee who receives a written request from the Board 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.
- 13.12. VA/HUD Approval. As long as Declarant has the right to appoint and remove the directors of the Association, the following actions shall require the prior approval of the VA, so long as the VA is guaranteeing any mortgage in the property, and MUD, so long as HUD is insuring any mortgage in the Property: annexation of additional property to the Development, except for annexation of additional property to the Development, except for annexation by Declarant in accordance with Article X hereof pursuant to a plan if annexation previously approved by the VA and/or MUD as applicable; dedication of Common Property to any public entity; mortgaging of Common Property; mergers and consolidation; dissolution of the Association; and material amendment of the Declaration, Bylaws or Articles of Incorporation of the Association.
- 13.13. Indemnification. To the fullest extent allowed by applicable Georgia law, the Association shall indemnify every officer and director against any and all expenses, including, without limitation, attorney's fees, imposed upon or reasonably incurred by any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which such officer or director may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of

the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association shall maintain adequate general liability and directors' and officers' liability insurance to fund this obligation, if such coverage is reasonably available.

13.14. **Variances:** Notwithstanding anything to the contrary contained herein, the Board of Directors or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Development.

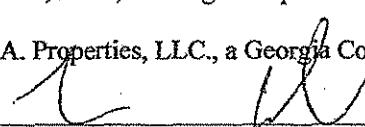
IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed

and sealed this _____ day of _____ 2006.

A.C.A. Properties, LLC., a Georgia Corporation, by Its general partner

By: A.C.A. Properties, LLC., a Georgia Corporation

By:


Tony Avarello
Managing Member

Attest:

Signed, sealed and delivered

This 29 day of March 2006, in the presence of

Lauron Martin
WITNESS

Patricia Glorie
NOTARY PUBLIC

MY COMMISSION EXPIRES AUG. 11, 2009

My Commission Expires: _____

(Notary Seal)

SEAL

EXHIBIT "A"

Land Initially Submitted

ALL THAT TRACT OR PARCEL OF LAND Lying and being in Land Lot 686 of the 21st District, 2nd Section of Cherokee County, Georgia and being known as Unit 1 of Belmont Trace Subdivision, as shown on that certain Final Plat of Belmont Trace Subdivision of Unit 1, dated November 22, 2004, prepared by Wikle Land Surveying, P.C., bearing the seal of Ron. R. Wikle, Jr., Georgia Registered Land Surveyor No. 2578, which plat was recorded on March 8, 2005 in Plate Book 83, Page 175, inclusive, of the Cherokee County, Georgia Land records.