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**DECLARATION OF
COVENANTS, RESTRICTIONS AND EASEMENTS
FOR
STONEBROOKE COMMONS
FORSYTH COUNTY, GEORGIA**

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**DECLARATION OF
COVENANTS, RESTRICTIONS AND EASEMENTS
FOR STONEBROOKE COMMONS
FORSYTH COUNTY, GEORGIA**

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS is made by FORSYTH LAND VENTURE, a Georgia General Partnership (the "*Declarant*").

WITNESSETH:

WHEREAS, Declarant is the owner, or has the consent of the owner, of all that tract or parcel of land lying and being in Land Lots 344 & 376, 2nd District, 1st Section, Forsyth County, Georgia, as shown on the Final Plat for STONEBROOKE COMMONS Unit 1, Section 1 recorded in Plat Book 75, Pages 150-153, Forsyth County, Georgia records, less and except any portions thereof dedicated to Forsyth County, Georgia (the "*Property*") and

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

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

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

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

**ARTICLE I.
DEFINITIONS**

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

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

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

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

"Area of Common Responsibility" shall mean the Common Areas, together with any additional areas, if any, which by the terms of this Declaration or by contract or agreement with any other Person become the responsibility of the Association.

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

"Association" shall mean Stonebrooke Commons Homeowners Association, Inc., a Georgia corporation.

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

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

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

"Community Wide Standards" shall mean the standard of conduct, maintenance or other activity generally prevailing throughout the Property. Such standard shall initially be established by the Declarant and may be more specifically determined by the Board of Directors or the Architectural Review Board.

"Cottage Home Lot" shall mean a Lot which is intended for development, use, and occupancy as a cottage home, a zero lot line home, or a single-family attached residence, as shown on the Plat.

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

"Declarant" shall mean Forsyth Land Venture, a Georgia General Partnership and shall include any successor or assign who shall acquire any portion of the Property for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant; provided, however, that there shall be only one "Declarant" hereunder at any one time.

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

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

"First Mortgage" shall mean a deed or other document by means of which title to any Lot is conveyed or encumbered to secure a debt of first priority.

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

"Limited Common Areas" shall mean those portions of the Common Areas primarily benefiting one or more, but less than all, Neighborhoods or Lots, and which are designated as such by the Association, or, if during the Development Period, the Declarant, as more particularly described in Article III herein.

"Lot" shall mean each portion of the Property which may be independently owned and conveyed and

which is intended for development, use, and occupancy as an attached or detached residence for a single family, as shown on the Plat.

"Member" shall mean a Person subject to membership in the Association pursuant to Article IV hereof.

"Neighborhood" shall mean a group of Lots designated as a separate Neighborhood pursuant to Article IV for purposes of sharing one or more Limited Common Areas and/or receiving other benefits or services from the Association which may be common to those Lots and not provided to all Lots. A Neighborhood may be comprised of more than one housing type and may include noncontiguous parcels of property. Neighborhood boundaries may be established and modified as provided in Article II hereof.

"Neighborhood Assessments" shall mean assessments levied against Lots in a particular Neighborhood to fund Neighborhood expenses, as described in Article V.

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

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

"Plat" shall mean the Final Plat for Stonebrooke Commons Unit 1, Section 1, prepared by Shirley, Nelson and Associates, Inc. and recorded at Plat Book 75, Pages 150-153, Forsyth County, Georgia records and all plats and amendments that are hereafter recorded in the County Clerk's plat book records.

"Property" shall have the meaning ascribed to it hereinabove.

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

"Unimproved Lot" shall mean a Lot which is not an Improved Lot.

ARTICLE II. PROPERTY SUBMITTED TO THIS DECLARATION

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

Section 2. Annexation of Additional Property. The Declarant may, at any time, and from time to time, prior to ten years from the date hereof, subject all or part of the Additional Property to the terms, provisions, liens, charges, easements, covenants and restrictions of this Declaration by executing and recording with the County Clerk an amendment to this Declaration describing the property being annexed.

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

restrictions set forth in this Declaration shall be a permanent charge on, and shall run with, such annexed property.

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

No approval from any member of the Association, or from anyone else whomsoever, shall be required for the Declarant to subject additional property to this Declaration.

Section 3. Withdrawal of Property. The Declarant reserves the right to amend this Declaration during the Development Period, for the purpose of removing any portion of the Property from the coverage of this Declaration, provided such withdrawal is not contrary to the overall, uniform scheme of development for the Property. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if same is not the Declarant. If the property is part of the Common Areas, the Association shall consent to such withdrawal.

Section 4. All Lots Bear the Burdens and Enjoy the Benefits of this Declaration. Every Owner, by taking record title to a Lot, agrees to all of the terms and provisions of this Declaration. Each of the Lots is subject to all burdens, and enjoys all benefits, made applicable hereunder.

Section 5. Easements Over the Lots. The Lots shall be subjected to, and the Declarant does hereby grant, the following non-exclusive perpetual easements for the enjoyment of Declarant, the Association, the Members, the Owners, and the successors-in-title of each:

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

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

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

(d) **Use Rights within Fenced Back and Side Yard Areas.** The Owner of each Lot within the Single Family Home Neighborhood grants an easement for the exclusive use of and enjoyment by his/her adjoining neighbor to any portion of the Owner's Lot that is enclosed within the fence surrounding such adjoining neighbor's back and/or side yard areas. Notwithstanding that portions of said fence may be located entirely on one Owner's Lot, all such fences shall be considered party fences and governed by the provisions set forth in Article VIII, Section 3 herein.

(e) **Surface Water Drainage.** Each Lot shall be subject to a perpetual easement in favor of the Association and all other Lots for the drainage of surface waters over and across such Lot.

(f) **Fencing Around Cottage Home Neighborhood.** Lots 187-201 shall be subject to a perpetual easement in favor of the Association for maintenance, repair and replacement of the fencing which is or will be located on said Lots. The Owners of these Lots shall not remove, camouflage, damage or otherwise alter in any way said fencing.

The easement rights to which the Lots shall be subject shall include the right of contractors engaged by the Association to enter upon said Lots from time to time as necessary in order to perform repair and maintenance work.

(g) Detention Facilities. Lots 8-9 shall be subject to a perpetual easement in favor of the Association for access, repair, use, management and maintenance of the Detention Pond shown on the Plat. The easement rights to which the Lots shall be subject shall include the right of contractors engaged by the Association to enter upon said Lots from time to time as necessary in order to perform repair and maintenance work, including without limitation dredging and silt removal. The Association shall be responsible for the maintenance and management of the Detention Pond.

(h) Private Roads. All lots shall be subject to a perpetual easement in favor of the Association for maintenance, repair and landscaping of the private roads which are located in the development. Said private roads shall be used as, and provide for, ingress and egress for all Lots in the Association. No Lot shall in any way camouflage, damage or alter said road or the ability for access by any of the Lots herein.

(i) Cottage Home Maintenance. There is reserved for the benefit of each Cottage Home Lot a reciprocal appurtenant easement between all adjacent Cottage Home Lots for the purpose of maintaining or repairing the improvements located on each Cottage Home Lot, which easement shall extend to a distance of five (5) feet as measured from any point on the common boundary between the Cottage Home Lots. This easement shall be used only for such period of time as is reasonably necessary in order to complete the maintenance or repair. The Owner exercising this easement right shall be liable for the prompt repair of any damage to the Cottage Home Lots over which this easement is exercised which arises out of such maintenance or repair work.

(j) Cottage Home Fencing. Lots 1-12 shall be subject to a perpetual easement in favor of the Association for maintenance, repair and replacement of the fencing which is or will be located on said Lots. The Owners of these Lots shall not remove, camouflage, damage or otherwise alter in any way said fencing. The easement rights to which the Lots shall be subject shall include the right of contractors engaged by the Association to enter upon said Lots from time to time as necessary in order to perform repair, and maintenance work.

Section 6. Neighborhoods. The Declarant hereby establishes two Neighborhoods within the Property. Lots 187-201 are designated as one Neighborhood called the Cottage Home Neighborhood and all remaining Lots are hereby designated as one Neighborhood called the Single Family Home Neighborhood. The Declarant, in its sole discretion, may establish additional Neighborhoods within the Property by amendment to the Declaration and/or plat in order to subject such Lots to additional covenants and restrictions or to benefit said Lots differently from other Lots on the Property. During the Development Period, the Declarant may unilaterally amend this Declaration and any plat from time to time to assign property to a specific Neighborhood, to redesignate Neighborhood boundaries, or to remove property from a specific Neighborhood.

Following the Development Period, the Owner(s) of a majority of the total number of Lots within a Neighborhood may at any time petition the Board of Directors to divide the property comprising their Neighborhood into two (2) or more Neighborhoods. Such petition shall be in writing and shall include a survey of the entire parcel which indicates the proposed boundaries of the new Neighborhoods or otherwise identifies the Lots to be included within the proposed Neighborhoods. Such petition shall be deemed granted thirty (30) days following the filing of all required documents with the Board unless the Board denies such application in writing within such thirty (30) day period. The Board may deny any application only upon determination that there is no reasonable basis for distinguishing between the areas proposed to be divided into separate Neighborhoods. The Owners requesting the division shall be responsible for any expenses incurred with respect to implementing a division of a Neighborhood, including but not limited to a revised plat, if the application is approved.

Any Neighborhood may, but shall not be required to, elect a Neighborhood committee to represent the interests of the Owners in such Neighborhood. No Neighborhood committee shall be formed, however without the prior submission to and written approval of Board.

Any Neighborhood may request that the Association provide a higher level of service or special services for the benefit of Lots in such Neighborhood and upon written consent of a majority of Owners of the Lots within the Neighborhood, the Association may, in its sole discretion, provide the requested services. The cost of such service, which may include a reasonable administrative charge in such amount as the Board may deem appropriate (provided such administrative charge shall apply at a uniform rate per Lot to all Neighborhoods receiving the same service), shall be assessed against the Lots within such Neighborhood as a Neighborhood Assessment pursuant to Article V herein.

No action may be taken by a Neighborhood which is adverse to the interests of the Association or its Members or that is inconsistent with the Community Wide Standards. If the Neighborhood fails to comply with such requirements of the Association as specified by the Association in writing the Association may assess the Lots within such Neighborhood for any expense incurred by the Association to correct the inconsistency or deficiency.

ARTICLE III. ASSOCIATION PROPERTY

Section 1. Common Areas and Association Property. The Declarant shall have the right to transfer and convey to the Association any portion of the Property. All portions of the Property which the Declarant shall so transfer or convey to the Association shall thereafter constitute Common Areas. Said right may be exercised by the Declarant any time, and from time to time, prior to ten years from the date hereof. The Declarant may further delineate portions of the Common Areas to be Limited Common Areas which, when so designated, shall mean that said property benefits one or more, but less than, all Neighborhoods or Lots on the Property.

Common Areas shall be conveyed to the Association by limited warranty deed free of debt encumbrance, and subject to the rights and easements set forth in this Article, irrespective of whether the deed of conveyance shall make a specific reference to such rights and easements.

Section 2. Member's Rights in Association Property. Except in the case of Common Areas designated as Limited Common Areas, every Owner of every Lot shall have a non-exclusive right and easement of enjoyment and use in and to the Common Areas and such right and easement shall be appurtenant to, and shall pass with, the title to the Lot(s) owned by such Owner. Where Common Areas are designated as Limited Common Areas, the Owners of Lots benefited by said Limited Common Areas shall have the right and easement of enjoyment and use in and to said Limited Common Areas. The right and easement of enjoyment and use of the Common Areas and Limited Common Areas are and shall be subject to the easements which are described in this Article and to the right of the Association to promulgate reasonable rules and regulations regarding the use of Common Areas and Limited Common Areas, and the right of the Association, as provided in the Bylaws, to suspend the enjoyment rights of the owner of any Lot during any period in which any assessment which is due to the Association from such owner remains unpaid, and such period as the Board of Directors may consider appropriate for any infraction of its published rules and regulations.

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

Section 3. Easements Over Association Property. All Common Areas, including Limited Common Areas, shall be subject to, and Declarant and the Association do hereby grant, the following easements:

(a) An easement across, in, under, over and through the Common Areas for purposes of the construction, installation, repair, maintenance and use of all utility and drainage facilities; and

(b) An easement in favor of Declarant for the exclusive use of such portions of the Common Areas as may be reasonably desirable, convenient or incidental to the construction and installation of improvements on, and the sale of, any Lots, including, but not limited to, sales and business offices, storage areas, construction yards and signs. Such easements shall be exercisable by any and all persons who the Declarant shall authorize to exercise the same, including, without limitation, real estate sales agents and brokers and builders of residences upon the Lots, irrespective of whether such persons are affiliated with the Declarant. Such easements shall exist notwithstanding any provision of this Declaration which might be construed to the contrary, but shall terminate thirty (30) days after the date that the construction of residential buildings on the Lots has been completed and all of the Lots have been conveyed to Owners thereof who shall not have acquired the Lots for the purpose of immediate resale of the same. Such easements shall and do exist without affecting the obligation of the Owner of any Lot to pay assessments or charges coming due during such period of time as portions of the Common Areas shall be used by authorized persons pursuant to the exercise of the easements herein stated.

Section 4. No Partition. The Common Areas shall remain undivided and no Owner shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the Property and without the written consent of all holders of all mortgages encumbering any portion of the Property.

Section 5. Condemnation. In the event that any part of the Common Area shall be taken by any authority having the power of condemnation or eminent domain or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of at least 67% of the Class A votes and, during the Development Period, the written consent of Declarant, the Association shall restore or replace the improvements on the remaining land included in the Common Area to the extent available unless, within sixty (60) days after such taking at least 67% of the Class A votes and Declarant (if during the Development Period) otherwise agree. The provisions of subsection 7 below regarding funds for the repair of damage or destruction shall apply. If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds may be used by the Association for such purposes as the Board shall determine.

Section 6. Insurance on Common Areas. The Association shall maintain and keep in good repair the Common Areas. Additionally, the Association shall obtain the insurance coverage necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the U.S. Department of Veterans Affairs, and the U.S. Department of Housing and Urban Development, as applicable to the Property. The Board of Directors shall obtain casualty insurance for all insurable improvements located on the Common Areas, which the Association is obligated to maintain. This insurance shall provide, at a minimum, fire and extended coverage and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The Board of Directors shall obtain a public liability policy with a combined single limit of at least One Million (\$1,000,000.00) Dollars applicable to the Common Areas covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, and, if reasonably available, directors' and officers' liability insurance. Policies may contain a reasonable deductible as determined by the Board of Directors. In addition, the Board of Directors shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on all persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall at least equal three months' total assessments plus reserves on hand. Fidelity coverage shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation. All such insurance coverage shall be written in the name of the Association.

Section 7. Damage or Destruction. In the event that any improvements located on any Common Areas shall be damaged or destroyed on account of the occurrence of any casualty, the Board of Directors shall proceed with the filing and settlement of all claims arising under any policy of insurance maintained by the Association with respect to such improvements and shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed improvements.

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

Section 8. Actions Requiring Owner Approval. If the U.S. Department of Housing and Urban Development is insuring the Mortgage on any Lot or the U.S. Department of Veterans Affairs is guaranteeing the Mortgage on any Lot, then any conveyance or mortgaging of the Common Areas shall require the consent of at least 67% of the Class A votes held by members other than the Declarant and, during the Development Period, the consent of Declarant. Notwithstanding anything to the contrary in this section, however, the Association, acting through the Board, may grant easements over the Common Area for installation and maintenance of utilities and drainage facilities and for other purposes not inconsistent with the intended use of the Common Area, without the approval of the membership.

ARTICLE IV. THE ASSOCIATION

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

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

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

Section 3. Classes of Membership: Voting Rights. The Association shall have two classes of voting membership: Class A and Class B.

(a) Class A. The Class A members shall be all those Persons holding an interest required for membership in the Association, as specified in of this Article, except for those Persons who are Class B members. Until such time as the Class A members shall be entitled to full voting privileges, as hereinafter specified, the Class A membership shall be a non-voting membership except as to such matters and in such events as are hereinafter specified.

The Class A members shall be entitled to full voting privileges on the earlier of the following dates to occur: (i) the date which the Declarant may so designate by notice in a writing delivered to the Association, (ii) the date on which 100% of the Lots are Improved Lots (or such lesser percentage as may be required by HUD) or (iii) ten years from the date hereof. Until the earliest of these dates occurs, the Class A members shall be entitled to vote only on matters for which it is herein specifically provided, or for which it is provided by law, that approval of each and every class of membership of the Association is required. When entitled to vote, Class A members shall be entitled to cast one (1) vote for each Lot in which they hold an interest required for membership.

(b) Class B. Declarant shall be the only Class B member. Class B membership shall be a full voting membership and, during its existence, the Class B members shall be entitled to vote on all matters and in all events. At such time as the Class A members shall be entitled to full voting privileges, as provided in paragraph (a) hereof, the Class B membership shall automatically terminate and cease to exist, and the Class B member shall be and become a Class A member insofar as it may then hold any interest required for membership.

From and after the date at which the Class B membership automatically terminates and ceases to exist, such membership shall not be renewed or reinstated.

Section 4. Suspension of Membership Rights. The membership rights of any member of the Association, including the right to vote, may be suspended by the Board of Directors pursuant to the authority granted in the Bylaws. Any such suspension shall not affect such member's obligation to pay assessments coming due during the period of such suspension and shall not affect the permanent charge and lien on the member's Lot in favor of the Association.

Section 5. Meetings of the Membership. All matters concerning the meetings of members of the Association, including the time at which and the manner in which notice of any said meeting shall be given to members, the quorum required for the transaction of business at any meeting, and the vote required on any matter, shall be as specified in this Declaration, or in the Articles of Incorporation or the Bylaws, or by law.

Section 6. Association Acts Through Its Board of Directors. Whenever approval of, or action or inaction by, the Association is referred to or called for in this Declaration, such action, inaction or approval shall be by the Board of Directors of the Association, unless it is specifically stated in this Declaration, the Articles of Incorporation or the Bylaws with respect to such action, inaction or approval that the members of the Association must vote. No member of the Board of Directors of the Association or any officer of the Association (including, without limitation, any such individual who shall have been elected by a vote of the Class B member) shall be personally liable to any owner of any Lot for any mistake of judgment or for any other act or omission of any nature whatsoever, except for any acts or omissions found by a court of competent jurisdiction to constitute gross negligence or fraud.

Section 7. Professional Management. The Association may, but shall not be obligated to, obtain and pay for the services of any person or other entity to manage the affairs of the Association, or any part thereof, as the Board of Directors deems to be in the best interests of the Association.

ARTICLE V. ASSESSMENTS

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

All sums lawfully assessed by the Association against any Lot and the owner thereof, together with interest thereon and the costs of collection thereof, shall, from the time the sums become due and payable, be the personal obligation of the Owner of such Lot and constitute a continuing lien in favor of the Association on such Lot prior and superior to all other liens whatsoever except: (1) Liens for ad valorem taxes on the Lot; (2) The lien of any first priority mortgage covering the Lot and the lien of any mortgage recorded prior to the recording of this Declaration; and (3) The Lien of any secondary purchase money mortgage covering the Lot, provided that neither the grantee nor any successor grantee on the mortgage is the seller of the Lot. The covenant to pay assessments herein stated is and shall be a covenant running with land.

Section 2. Purposes of Assessments. The assessments levied by the Association pursuant to this Article

shall be used to pay the costs and expenses which the Association shall incur in connection with the performance of its duties and responsibilities pursuant to the Act, this Declaration, the Articles of Incorporation and the Bylaws (such costs and expenses being herein referred to as the "Annual Expenses"). Without limiting the generality of the foregoing, the Annual Expenses shall include the costs of: payment of all costs and expenses incurred by the Association in connection with the maintenance of the Area of Common Responsibility and the Association's other operations; payment of the premiums for all fidelity bonds which shall be obtained by the Association; the payment of the fees of such management firms as the Board of Directors shall employ; payment of fees for the provision of such professional services as the Board of Directors shall determine to be required by the Association, including but not limited to legal, accounting and architectural services; and such other purposes as the Board of Directors shall deem necessary or desirable to promote the health, safety and welfare of the Association and its members.

Section 3. Determination of Annual Assessment and Shares Thereof. Prior to the commencement of each fiscal year of the Association or at any time it deems best (said fiscal year being specified in the Bylaws), the Board of Directors shall estimate the total amount of the Annual Expenses which are anticipated to be incurred by the Association during such fiscal year and shall determine the amount which will be deposited during such fiscal year into reserve funds maintained by the Association. The Board of Directors shall thereupon adopt a budget for the Association's expenditures and reserves based upon such estimate and providing for the total annual assessment to be levied against the members of the Association for such fiscal year (the total assessment which shall be so determined and levied for any fiscal year is herein referred to as the "Annual Assessment"). The assessments provided for herein shall commence as to a Lot on the date that a Lot becomes an Improved Lot, with all Improved Lots being assessed equally. The Board of Directors shall send a copy of the budget so adopted by it, together with a written notice of the amount of the Annual Assessment so determined for such fiscal year and the amount of such Annual Assessment which shall be levied against each Lot, to the Owner of every Lot prior to the commencement of the fiscal year during which such Annual Assessment is to be paid. The amount of such Annual Assessment which shall be levied against each Lot shall be due and payable to the Association in such installments as the Board of Directors shall determine and shall be paid to the Association when due without further notice.

Section 4. Special Assessments. If for any reason, including non-payment of any assessments to the Association by the persons liable therefore, the budget adopted by the Board of Directors for any fiscal year shall prove to be inadequate to defray the Annual Expenses for such fiscal year, or if the Board of Directors shall determine that it is in the best interests of the Association to levy a special assessment to pay the costs of any capital improvements or capital repairs, the Board of Directors shall have the authority to levy a special assessment against the Lots and the Owners thereof to raise such needed funds. Any special assessment levied by the Board of Directors pursuant to the provisions of this section shall be payable at such times and such installments as the Board of Directors shall determine. Each Lot shall be liable for the payment of an equal share of every special assessment which shall be levied by the Association pursuant to the provisions of this section.

Section 5. Specific Assessments. The Board may levy specific assessments against individual Owners (i) for the purpose of paying for the costs of any construction, reconstruction, repair or replacement of any damaged component of the Common Areas, or of any monument, landscaping, detention pond or other thing maintained by the Association, which is occasioned by the acts of individual Owners(s) and not the result of ordinary wear and tear or (ii) for the payment of fines, penalties or other charges imposed against an individual Owner relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Bylaws, or any rules or regulations promulgated hereunder; provided that Declarant shall not be obligated to pay any Special Individual Assessment. Failure of the Board to exercise its authority under this section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this section in the future with respect to any expenses.

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

Section 6. Neighborhood Assessments. The Board may specifically assess Owners of Lots within Neighborhoods for Association expenses as follows: (a) expenses of the Association which benefit all of the Lots in a Neighborhood but not the Lots in other Neighborhoods may be specifically assessed equitably among all of the Lots in such Neighborhood according to the benefit received; and (b) expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be assessed equitably among all Lots according to the benefit received.

Prior to the commencement of each fiscal year of the Association or at any time it deems best (said fiscal year being specified in the Bylaws), the Board shall prepare a separate budget covering the estimated Neighborhood expenses for the coming year. During the Development Period, the Board shall determine the level of services to be provided by the Association to each Neighborhood. After the expiration of the Development Period, any Neighborhood may request that additional services or a higher level of service be provided by the Association and, upon approval of a majority of Owners within such Neighborhood, any additional costs shall be added to such budget. Such budget may contain a contribution establishing a reserved fund for repair and replacement of capital items maintained as a Neighborhood expense. Neighborhood expenses shall be allocated equally among all Lots within the Neighborhood benefited thereby and levied as a Neighborhood Assessment.

The Board shall send a copy of the budget so adopted by it, together with a written notice of the amount of the Neighborhood Assessment so determined for such fiscal year and the amount of such Neighborhood Assessment which shall be levied against each Lot, to the Owner of every affected Lot prior to the commencement of the fiscal year during which such Neighborhood Assessment is to be paid. The amount of such Neighborhood Assessment which shall be levied against each Lot shall be due and payable to the Association in such installments as the Board shall determine and shall be paid to the Association when due without further notice.

Section 7. Special Assessment for Working Capital Reserve. Upon the first transfer of title to an Improved Lot, there shall be levied against such Improved Lot and paid to the Association a special assessment against such Improved Lot as set from time to time by the Declarant or Board of Directors of the Association. Such amount shall not exceed the amount of the Annual Assessment which shall have been levied against Improved Lots for the calendar year in which such transfer of title shall take place. The Association shall use all special assessment payments which shall be so received by it pursuant to this section to establish a working capital reserve fund for use in connection with capital improvements or repairs.

Section 8. Effect of Non-Payment of Assessments; Remedies of the Association.

(a) In the event that any member of the Association shall fail to pay, within ten (10) days after the date the same is due and payable, any annual, special, specific or neighborhood assessment, or any installment of any such assessments which is payable by him to the Association, the entire amount of such assessment, including the portion thereof which would otherwise be payable in installments, may be declared by the Board of Directors to be immediately due and payable in full to the Association. All such amounts so declared by the Board of Directors to be due and payable in full to the Association shall be secured by the lien of the Association on every Lot owned by the delinquent member, which lien shall bind such Lot or Lots in the hands of the then Owner, and his heirs, devisees, successors and assigns. In addition to the lien rights, the personal obligation of the then Owner to pay such assessments shall remain his personal obligation and shall also pass to his successors in title. Such Owner shall nevertheless remain as fully obligated as before to pay to the Association any and all amounts which said Owner was obligated to pay immediately preceding the transfer; and such Owner and such successors in title shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such Owner and successors in title creating any indemnification of the Owner or any relationship of principal and surety as between themselves.

(b) All amounts which the Board of Directors shall declare to be due and payable pursuant to this section shall bear interest from the date of delinquency at the lower of the rate of ten (10%) percent per annum or the highest rate permitted by law, and the Association may bring legal action against the member of the Association personally obligated to pay the same, or foreclose its lien upon the Lot or Lots of such member, in either of which

events such member shall also be liable to the Association for all costs and attorneys' fees which the Association shall incur in connection with the collection of such delinquent amounts.

Section 9. Budget Deficits during Declarant Control Period. Declarant may advance funds to the Association sufficient to satisfy the deficit, if any, in any fiscal year between the actual operating expenses of the Association (exclusive of any allocation for capital reserves) and the annual and special assessments for such fiscal year. Such advances shall be evidenced by promissory notes from the Association in favor of the Declarant and shall be paid back to Declarant if and to the extent that sufficient funds are generated by assessments in future years until such time as Declarant no longer has the authority to appoint the directors and officers of the Association.

Section 10. Failure to Assess. The failure of the Board to fix the assessment amounts or to deliver to each Owner the assessment notice shall not be deemed a waiver, modification or release of any Owner of the obligation to pay assessments. In such event, each Owner shall continue to pay assessments on the same basis as for the last year for which an assessment was made until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

ARTICLE VI. ARCHITECTURAL CONTROL

Section 1. Architectural Restrictions. (a) No building shall be constructed on any Lot unless such building meets all square footage and other requirements as set forth in the Plat.

(b) No structure other than a fence shall be constructed, placed or installed upon any Lot in a location which encroaches beyond any front, side, or rear building setback line which is depicted on the Plat. No fence shall be constructed or erected upon any Lot in any location without the prior written approval of the ARB. No chain link fences shall be erected or maintained on any Lot.

Section 2. No Combination of Lots. Contiguous Lots may not be combined together without prior written consent of the Board of Directors. In the event that the Board of Directors does approve such a combination, such combination shall thereafter be deemed to be a single Lot for all purposes of this Declaration, except that notwithstanding the foregoing, the amount of assessments for which such single Lot shall be thereafter liable shall be equal to the total assessments for which all of the Lots which were so combined would have been liable had such combination not taken place.

Section 3. Architectural Review Board. Responsibility for the review of all applications under this Article shall be handled by the Architectural Review Board ("ARB"), the members of which need not be Members of the Association or representatives of Members, and may, but need not, include architects, landscape architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Association. The ARB may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred by the ARB in having any application reviewed by architects, engineers or other professionals.

The ARB shall have exclusive jurisdiction over all construction, alterations or additions on any portion of the Property. The ARB shall have the right, but not the obligation, to promulgate design guidelines and standards for the Property so long as said guidelines and standards are not inconsistent with this Article or the intent of the Declaration.

Until one hundred (100%) percent of the Lots are Improved Lots, the Declarant retains the right to appoint all members of the ARB, who shall serve at the Declarant's discretion. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration or

surrender of such right, the Board of Directors shall appoint the members of the ARB, who shall thereafter serve and may be removed in the Board of Director's discretion.

Section 4. Architectural Control. (a) No exterior construction, alteration or addition of any nature whatsoever (including but not limited to a building, fence, wall, garage, patio, carport, playhouse, swimming pool or other structure, staking, clearing, excavation, grading, filling, change in color or type of any existing improvement, planting or removal of landscaping materials, exterior lighting, placement or installation of statuary, flags, fountains and similar items, improvements or modifications to the roof, material, color, paint stain or varnish, or the interior porches, patios or similar portions of a structure which are visible from outside the Lot), shall be commenced, placed or maintained upon any Lot until complete and final plans and specifications setting forth the information hereinafter described shall have been submitted to, and approved in writing by, the ARB as to the harmony of the exterior design and general quality with the existing standards of the improvements located on the other Lots, and as to location in relation to surrounding structures and topography. In the event the ARB fails to approve or disapprove such design and location within thirty (30) days after said plan and specifications have been submitted to it, approval will not be required, and this section will be deemed to have been fully complied with.

(b) The plans and specifications, which must be submitted to the ARB prior to the commencement of any such work upon any Lot, as hereinabove provided, shall contain at least the nature, kind, shape, height, materials, color, texture and location of such structure, alteration or landscaping and such other information as the ARB may reasonably request in order to render a decision.

(c) The ARB shall, upon demand, furnish to any member of the Association a certificate in writing signed by a member of the ARB, stating that any exterior addition to, change in, or alteration of any structure or landscaping owned by such member on a Lot is in compliance with the provisions of this section, and such certificate shall be conclusive as to whether the same is in such compliance.

(d) In the event that any construction or alteration or landscaping work is undertaken or performed upon any Lot without application having been first made and approval obtained as provided in paragraph (a) of this section, said work shall be deemed to be in violation of this covenant, and the person upon whose Lot said work was undertaken or performed may be required to restore to its original condition, at his sole expense, the property upon which said work was undertaken or performed. Upon the failure or refusal of any person to perform the restoration required herein, the ARB, or their authorized agents or employees, may, after fourteen (14) days' notice to such person, enter upon the property upon which such unauthorized work has been performed, and make such restoration as the ARB, in the exercise of its discretion, may deem necessary or advisable. The person upon whose Lot such restoration work shall have been so performed shall be personally liable to the Association for all direct and indirect costs which the Association shall incur in the performance of such restoration work, including without limitation attorneys fees, and the liability for such cost shall be secured by all the liens, and shall be subject to the same means of collection, as the assessments provided for in this Declaration. Such costs shall be paid to the Association by the person liable for the same at the same time as the next due Annual Assessment payment, or at such earlier time, and in such installments, as the ARB shall determine.

Section 5. Declarant Exemption. Notwithstanding anything stated to the contrary herein, nothing contained in this Article shall be construed as prohibiting any construction, alteration, addition or removal by the Declarant upon any Lot while such Lot is owned by the Declarant. Any construction, alteration, addition or removal performed by the Declarant upon any Lot while such Lot is owned by the Declarant shall be exempt from the provisions of this Article.

ARTICLE VII. RESTRICTIONS

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

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

Section 2. Prohibited Activities. No noxious, offensive, unsightly or unkempt activity shall be conducted on any Lot. Each owner of any Lot, his family, tenants, guests and invitees, shall refrain from any act or use of his property which could reasonably cause embarrassment, discomfort, annoyance or nuisance to any other resident or residents of any other Lot. Storage or placement of furniture, fixtures, appliances, machinery, bicycles, towels, equipment or other goods or chattels not in active use on any Lot which is visible from outside the Lot (including rooftop terraces) is prohibited except as specifically permitted in this Declaration.

Section 3. Nuisances. No nuisance shall be permitted to exist upon any Lot. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any Lot, or any portion thereof.

Section 4. Animals. No Owner may keep any pets other than a reasonable number of generally recognized household pets, as determined by the Board, on any portion of the Property. No Owner or Occupant may keep, breed or maintain any pet for any commercial purpose. Animals must be kept on a leash and be under the physical control of a responsible person at all times while outdoors. Any feces left upon the Common Areas by an animal must be removed by the owner of the animal or the person responsible for the animal.

No animal determined to be dangerous, in the Board's sole and absolute discretion, may be brought onto or kept on the Property at any time. The Board may remove without notice any animal that presents an immediate danger to the health, safety or property of any resident.

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

Section 5. Antennas; Aerials; Satellite Dishes. The Owner of each Lot shall have the right to install, maintain and use on such Lot one antenna, aerial, or satellite dish to receive video programming that is (i) not larger than one meter in diameter, (ii) blends with the color of the roof or wall where it is installed, and (iii) is installed on the Lot's rooftop terrace. No other exterior antennas, aerials, satellite dishes or other reception device shall be constructed, installed, placed or affixed unless approved in accordance with the Architectural Control provisions contained in the previous Article. Installation of an antenna deviating from the above provision shall be approved pursuant to the Architectural Control provisions if reasonably necessary to permit the reception of an acceptable quality signal. HAM radios, two way radios and other hobby or professional radio communication transmission equipment are prohibited.

Declarant or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus of any size for a master antenna, cable, or other communication system for the benefit of all or a portion of the Property.

Section 6. Clotheslines. No exterior clothesline of any type shall be permitted on any portion of any Lot.

Section 7. Signs. No sign of any kind or character shall be erected on any portion of any Lot, or displayed to the public on any portion of any Lot, without the prior written consent of the Board of Directors, except for customary name and address signs, one customary "for sale" sign advertising a Lot for sale and any sign required by legal proceedings. The restriction herein stated shall include the prohibition of placement of any sign within a building located on any Lot in a location from which the same shall be visible from the outside and the placement of any sign in or upon any motor vehicle.

Section 8. Swimming Pools. No swimming pool shall be constructed, erected or maintained with prior approval of the ARB. In no event shall above ground swimming pools or spas be allowed on any Lot.

Section 9. Trash Containers and Collection. No garbage or trash shall be placed or kept on the Property except in covered containers of a type, size and style which are approved by the Board of Directors or as required by the applicable governing jurisdiction, and subject to rules promulgated by the Association. No person shall burn rubbish, garbage or any other form of solid waste on any Lot or on Common Areas or within the right of way of any street in the Development.

Section 10. Vehicles and Parking. The term "vehicles" as used in this section shall include without limitation automobiles, trucks, boats, trailers, motorcycles, campers, vans, and recreational vehicles. No vehicle may be left upon any portion of the Property except upon a hard surfaced parking area or within a garage. No person shall park any commercial vehicles (including but not limited to any type of vehicle with advertising or lettering), recreational vehicles, mobile homes, trailers, campers, boats or other watercraft, or other oversized vehicles, stored vehicles or unlicensed or inoperable vehicles within the Property, with the exception of emergency vehicle repairs or commercial vehicles which are temporarily parked for the purpose of servicing a Lot or the Property.

Except for Lots which may not contain a garage, all Owner and occupant vehicles must be kept and stored when not in use within the Lot's garage space and garage doors must remain closed at all times except for entry and exit by vehicles and except for periods not to exceed two consecutive hours for homeowner related maintenance activities.

The Association may promulgate rules regarding parking privileges on the Common Areas and may designate certain parking areas as Limited Common Areas.

Section 11. Window Air-Conditioners. No air-conditioner shall be installed in any window of any building located on any Lot, nor shall any air-conditioner be installed on any building located on any Lot so that the same protrudes through any exterior wall of such building.

Section 12. Window Treatments. Except as may be otherwise approved in accordance with the Architectural Control provisions contained in the previous Article, all window treatments visible from the outside of a Lot shall be white or off-white in color. No bed sheets, newspaper, tin foil, or similar materials may be used as window treatments.

Section 13. No Subdivision of Lots. No Lot may be further subdivided into any smaller Lot.

Section 14. Interpretation. In all cases, the covenants and restrictions herein contained shall be construed and interpreted in a manner which, in the opinion of the Board of Directors, will best effect the intent of the general plan of development and maintenance herein set forth. Subject to the terms of this Article and the Board's duty to exercise business judgment and reasonableness, the Board may modify, cancel, limit, create exceptions to, or expand the restrictions contained herein and may create, modify and enforce reasonable rules governing the use of the Property consistent with the law and with other provisions in this Declaration. The Board shall send notice to all

Owners concerning any proposed action on restrictions or rules at least ten business days prior to the Board meeting at which such action is to be considered. For this purpose, notice may be sent to each Owner by U.S. mail, electronic telecommunication with confirmation of receipt, or publication in the community newsletter delivered or mailed to each Owner provided that such notice is clearly identified under a separate headline in the newsletter. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Notwithstanding the above however, the Board shall have no authority to create new restrictions. New restrictions may be adopted only by amendment to this Declaration.

ARTICLE VIII. MAINTENANCE OF LOTS

Section 1. Association's Maintenance Responsibility. The Association shall keep in good repair the Common Areas, including but not limited to Limited Common Areas. If and to the extent the following facilities are not maintained by a governmental entity, the Association shall also maintain the Areas of Common Responsibility (whether or not constituting Common Areas), including: (a) all entry features to the Property; (b) all streets, parking areas and sidewalks; (c) any perimeter fencing; and (d) all landscaping within public right-of-way abutting the Property; (e) all storm water detention or drainage facilities serving the Property and (f) any recreational amenities determined by the Association as part of its maintenance responsibilities. Additionally, the Association has the right, but not the obligation, to maintain the front, rear and side yards of Lots and to provide for sanitation removal.

In the event that the Association determines that any maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, or the occupant, family, guest, invitee or lessee of an Owner, then the Association may perform such maintenance, repair or replacement and all costs thereof not paid for by insurance shall be assessed against the Owner as a specific assessment.

Section 2. Owner's Maintenance Responsibility. All maintenance and repair of each Lot not addressed as being the responsibility of the Association in Section 1 above, and all structures thereon on the Lot, shall be the sole responsibility of the Owner thereof, who shall maintain such Lot and improvements in a manner consistent with this Declaration. Such maintenance obligation shall include, without limitation, the following: prompt removal of litter and waste; keeping improvements, roofs and exterior structures and lighting in good working order and repair; complying with all governmental health and police requirements; and repair of exterior damage to improvements. In the event that the Board determines that any Owner has failed or refused to discharge properly such Owner's obligations hereunder, the Board shall have the right, exercisable by it or through its agents or employees, and after giving to the Owner of such Lot at least fourteen (14) days notice and an opportunity to correct the unsatisfactory condition (except in the event of an emergency situation, in which case no notice and opportunity to correct shall be required), to enter upon such Lot and correct the unsatisfactory condition. The Owner of the Lot upon which such maintenance work is performed by the Association (or its agents or employees) shall be personally liable to the Association for all direct and indirect costs as may be incurred by the Association in connection with the performance of such maintenance work, and the liability for such costs shall be secured by all the liens, and shall be subject to the same means of collection, as are the other assessments and charges provided for in this Declaration. In addition, all such costs shall be paid to the Association by such Owner at the same time as the next due Annual Assessment payment, or at such other time, and in such installments, as the Board shall determine.

Section 3. Party Walls. Each wall or fence built as part of the original construction of (i) the Cottage Home Lots which serves and separates any two adjoining Cottage Home Lots, or (ii) the Single Family Home Lots which serves and separates any two adjoining back or side yard areas, shall constitute a party wall or fence and, to the extent not inconsistent with the provisions of this section, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto. The cost of reasonable repair and maintenance of a party wall or fence shall be shared by the Owners who make use of the wall or fence in

equal proportions. If a party wall or fence is destroyed or damaged by fire or other casualty, then any Owner who has benefited by the wall or fence may restore it, and the other Owner who is benefited by the wall or fence shall contribute one-half of the cost of restoration, without prejudice, however, to the right of any Owner to call for a larger contribution from any other Owner under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Individual Insurance. Each Owner, by virtue of taking title to a Lot subject to this Declaration, acknowledges that the Association has no obligation to provide any insurance for any portion of individual Lots and each Owner covenants and agrees with all other Owners and with the Association that each Owner will carry at all times all-risk casualty insurance on the Lot and all structures constructed thereon and a liability policy covering damage or injury occurring on a Lot. The casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an all-risk policy, if reasonably available, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard.

ARTICLE IX. MORTGAGEE PROVISIONS

Section 1. Notice of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot Number, therefore becoming an "eligible holder"), will be entitled to timely written notice of: (a) any condemnation loss of any casualty loss which affects a material portion of Serenade or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such eligible holder; (b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by the Owner of the encumbered Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days; any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

Section 2. Audit. Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs, such holder shall be entitled to receive a copy of audited financial statements of the Association within 90 days of the date of the request.

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

Section 4. HUD/VA Approval. As long as the Declarant has the right to appoint and remove the officers and/or directors of the Association and so long as the project is approved by the U.S. Department of Housing and Urban Development ("HUD") for insuring or the U.S. Department of Veterans Affairs ("VA") for guaranteeing any Mortgage in Serenade the following actions shall require the prior approval of HUD and/or the VA as applicable: annexation of additional property; dedication of Common Areas to any public entity; merger, consolidation or dissolution of the Association; and material amendment of the Declaration, Bylaws, or Articles of Incorporation.

Section 5. 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, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

ARTICLE X.

AMENDMENT

Except as set forth below, the terms, provisions, covenants and restrictions of this Declaration may be amended only upon the affirmative vote or written consent, or any combination thereof, of 2/3 of the Lot Owners (other than Declarant) and approval of such amendment by the Declarant, so long as the Declarant owns any property for development and/or sale in the community. The approval of any such amendment by the members of the Association shall be given by each such member either casting a vote in favor of such amendment at a meeting of the members of the Association duly called for such purpose, or by such member signing a written approval of such amendment after the date on which such meeting was held. Notwithstanding the foregoing, the Board of Directors, with the written consent of the Declarant, and without the vote of the members, may amend this Declaration for the sole purpose of electing to be governed by the provisions of the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, *et seq.*

This Declaration may also be amended unilaterally by Declarant if: (a) such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rules or regulation or judicial determination which shall be in conflict therewith, (b) such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots, (c) such amendment is required by an institutional or governmental lender or purchaser of mortgage loans (such as the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation) to enable such lender or purchaser to make or purchase mortgage loans on the Lots, (d) such amendment is necessary to enable any governmental agency or private insurance company, including but not limited to the U.S. Department of Housing and Urban Development and the U.S. Department of Veterans Affairs, to insure or guarantee mortgage loans on the Lots, provided, however, that any such amendment shall not adversely affect the title to any Owner's Lot unless such Lot Owner shall consent thereto in writing, or (e) such amendment does not materially adversely affect the substantive rights of any Owners hereunder nor adversely affect title to any Lot without the consent of the affected Owner.

Any such amendment shall become effective upon the recording with the County Clerk of the instrument evidencing such change unless a later effective date is specified therein. The matters set forth in such instrument shall be presumed to be true and accurate and the amendment which is set forth in such instrument shall be effective, unless it shall be determined by a court of competent jurisdiction that the matters certified to in such instrument are not true and accurate. Any lawsuit challenging any aspect of an amendment to this Declaration must be filed in the Superior Court in the county where the Property is located within one year of the date of recordation of such amendment with the County Clerk.

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

ARTICLE XI. MISCELLANEOUS

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

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

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

Section 3. Duration. This Declaration, and all of the terms, easements, provisions, liens, charges, restrictions and covenants set forth herein, shall run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty (20) years from and after the date this Declaration is recorded, after which time such covenants and restrictions shall be automatically extended for successive periods of twenty (20) years until the recordation of an instrument of termination within two (2) years of the expiration of the initial twenty-year period or any extension thereof, such instrument having been executed by a minimum of fifty-one percent of the record Owners of the Lots.

Section 4. Notices. Any notice required or permitted to be sent to any member of the Association pursuant to any provision of this Declaration may be served by depositing such notice in the mails, postage prepaid, addressed to the member or Owner to whom it is intended, at the address which such member shall have furnished to the Secretary of the Association in accordance with the Bylaws, or, in the absence of any such address having been so furnished to the Secretary of the Association, at the address of the Lot owned by such member. The date of service shall be the date of mailing. The address of Declarant or the Association shall be the address of its respective registered agent on file with the Secretary of State of Georgia. The date of service shall be the date shown on the return receipt. Rejection or other refusal to accept shall be deemed to be receipt of the notice sent.

Section 5. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if any provision of this Declaration or the application thereof to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

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

Section 7. Successors to Declarant. In no event shall any person or other entity succeeding to the interest of the Declarant by operation of law or through purchase of the Declarant's interest in all or any portion of the Property at foreclosure, sale under power or by deed in lieu of foreclosure, be liable for any act, omission or matter occurring, or arising from any act, omission or matter occurring, prior to the date such successor succeeded to the interest of the Declarant.

Signatures follow on next page

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

Signed, sealed and delivered this
25 day of July, 2003
 in the presence of;

[Signature]
 Unofficial Witness

[Signature]
 Notary Public



Forsyth Land Venture,
 a partnership composed of:
 STONEGATE COMMONS, LLC,
 a Georgia limited liability company
 ATLANTA LAND, LP, a Delaware limited partnership

BY: STONEGATE COMMONS, LLC
 Its Manager

BY: *[Signature]*
 Robert C. Harris, President
 ROBERT HARRIS HOMES, INC.
 Its Member