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MCG Properties, LLC

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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**  
**FOR**

**BENTWATER SUBDIVISION AND**

**BENTWATER SUBDIVISION PROPERTY ASSOCIATION**

This DECLARATION OF COVENANTS AND RESTRICTIONS is made THIS 19<sup>th</sup> day of May, 2006 by:

MCG PROPERTIES, LLC hereinafter referred to as the "Developer."

WHEREAS, Developer owns all of the property known as Bentwater Subdivision shown as on that certain plat of survey recorded in Plat Book 38 at pages 134 through 135, Haralson County, Georgia Records (The "Subject Property"); and

WHEREAS, Developer desires to provide for the benefit of all of the residents of those portions of the Subjected Property, a Common Property (as herein after defined); and

WHEREAS, Developer deems it desirable to create the Association (as hereinafter defined) to own, maintain and administer the Common Property in accordance with the Covenants and Restrictions as hereinafter provided and to insure the enjoyment of such Common Property by such residents; and

WHEREAS, Developer intends that every Owner (as hereinafter defined) of a Residential Unit (as hereinafter defined) which is made subject to this Declaration does automatically and by reason of such ownership, and by reason of this Declaration, become a member of the Association and subject to its valid rules and regulations and subject to the assessment by the Association pursuant hereto;

NOW THEREFORE, the Developer declares that the properties which are made subject to this Declaration pursuant to Article 2 hereof are and shall be held transferred, sold, conveyed and occupied subject to the Covenants and Restrictions hereinafter set forth, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of such property. Such Covenants and Restrictions are and shall be binding on all parties and future parties having and acquiring any right, title or interest in such property or any part thereof and shall inure to the benefit of each Owner thereof.

**ARTICLE 1 DEFINITIONS**

The following terms when used in this Declaration of Covenants shall have the following meaning:

All those tracts or parcels of land lying and being in Land Lot 226 and 227 of the 7<sup>th</sup> district of Haralson County, Georgia, and being Lot 1 through and including Lot 90 of BENTWATER SUBDIVISION, and the area designated "Common Property," all as per plat of survey recorded in Plat Book 38 at pages 134 through 135, Haralson County, Georgia records.

2.02 AH Restricted Property Bears the Burden, and Enjoys the Benefit, of This Declaration. Every person who is or shall be a record owner by purchase, transfer, assignment or foreclosure of a fee or undivided fee interest in any portion of the Restricted Property or later added Restricted Property does agree and shall be deemed by reason of taking such record title to agree to all of the terms and provisions of this Declaration.

### ARTICLE 3

#### PROPERTY OWNERS ASSOCIATION; AUTOMATIC MEMBERSHIP; VOTING RIGHTS; AND THE GEORGIA PROPERTY OWNERS ASSOCIATION ACT.

3.01 The Association. The Developer has caused to be formed and incorporated under the laws of the State of Georgia and there does now exist Bentwater of Bremen Homeowners Association, a nonprofit Georgia Corporation.

3.02 Membership. Every person who is a Property Owner is and shall be a member of the Association.

3.03 Classes of Membership; Voting Rights. The Association shall have two classes of membership; Class A and Class B.

(a) *Class A.* Class A members shall be those persons holding an interest required for membership as specified in Section 2 of this Article 3 with the exception of the Developer. Class A membership shall be a nonvoting membership except on such matters and in such events as hereinafter specified. Class A members shall be entitled to full voting privileges:

(i) At such time as the Class B members shall so designate by notice in writing delivered to the Association.

Before the earlier of these events, the Class A members shall be entitled to vote only on:

(i) Any proposal or change of method of calculating the maximum amount of the annual assessment delivered by the Association;

(ii) Any proposal that is a special assessment by levied by the Association, except as otherwise specifically herein provided;

(iii) Any proposal not to repair or reconstruct any damage or destruction to the Common Property and the facilities thereon;

(iv) Any proposal to dedicate, transfer or sell all or any part of the Common Property;

(v) Any proposal of merger, consolidation or dissolution;

(vi) Any proposal to amend this Declaration of the Articles of Incorporation of the Association; and

(vii) Any other matter for which it is herein specifically provided that approval of all classes of membership is required.

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When entitled to vote, Class A members shall be entitled to one vote for each Residential Unit in which they hold any interest required for membership under Section 2 of this Article 3. When more than one person holds an interest or interest in a Residential Unit, the vote for such Residential Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Residential Unit. In the event of this agreement among such persons, and an account by two or more persons to cast a vote for such Residential Unit, such person shall not be recognized in the vote with respect to such Residential Units and shall not be counted.

(b) Class B. The Developer shall be the sole Class B member. Class B membership shall be full voting membership, and, during its existence, the Class B member shall be entitled to vote on all matters and all events. The Class B member shall be entitled to one vote for each Residential Unit in which it holds any interest. At such time as the Class A members shall be entitled to full voting privileges, the Class B membership shall automatically terminate and cease to exist, in which event each Class B member shall be and become a Class A member insofar as it may then hold any interest required for membership in Section 2 of this Article 3. From and after the date on which the Class B membership shall terminate in accordance with this Article 3 and cease to exist, such membership shall not be revived or restated.

3.04 Suspension of Membership Rights. The membership rights of any member, including the right to vote, may be suspended by the Association's Board of Directors pursuant to authority granted in the Association's By-Laws, as amended from time to time. Any such suspension shall not affect such members' obligations to pay assessments past due or coming due during the period of suspension and shall not affect the permanent charge and lien on the members' property in favor of the Association.

3.05 Meetings of the Membership. All matters concerning meetings of members of the Association, including the time in which and the manner in which notice of any of said meetings shall be given to members of the quorum and percentage vote required for the transaction of business of any meetings, shall be specified in this Declaration, in the By-Laws of the Association as amended from time to time or by law.

3.06 Bylaws or Rules and Regulations. Each Lot Owner shall be bound by the Bylaws and Rules and Regulations established from time to time by the Association, provided that the Association shall have no power to establish Bylaws or Rules and Regulations which:

(a) Conflict with or vary the terms of these covenants as they may be amended;

(b) provide for voting rights other than one (1) vote per Lot, on all issues and votes coming before the Association; or

(c) are established by a vote of less than a majority of the votes cast in person or by proxy at a meeting of members of the Association at which a quorum is present and which is held not less than ten (10) days after written notice is given to the members of the Association of the time, place and purpose of the meeting, together with a copy of the proposed Bylaw, Rule or Regulation or amendment thereto.

3.07 The Georgia Property Owners Association Act. The Association and this Declaration shall be governed by the benefits and provisions of the Georgia Property Owners Association Act, O.C.G.A. § 44-3-220, et seq.

(a) "Association" shall mean and refer to The Bentwater of Bremen Homeowners Association, a nonprofit corporation organized and existing on the laws of the State of Georgia.

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(b) "Covenants and Restrictions" shall mean and refer to all covenants, restrictions, easements and charges and liens set forth in this Declaration.

(c) "Developer" shall mean MCG Properties, LLC.

(d) "Development Documents" shall mean and refer to the Articles of Incorporation and ByLaws of the Association.

(e) "Manager" shall mean and refer to any person with whom the Association contracts for the administration and operation of the Common Property.

(f) "Mortgage" shall mean and refer to any security instrument by means of which title to the Common Property is conveyed or encumbered to secure a debt, including, without limiting the generality of the foregoing, security deeds, deeds to secure debt, mortgages and deeds of trust.

(g) "Owner" shall mean and refer to any Person (as hereinafter defined) who is or shall be a record owner by purchase, transfer, assignment of foreclosure of a fee or undivided fee interest in a Residential Unit (as hereinafter defined) in portion of the Restricted Property (as hereinafter defined); provided, however, that any Person who holds such interest merely as security for the performance of an obligation shall not be an Owner.

(h) "Person" shall mean and refer to any-natural person, corporation partnership, limited partnership, joint venture association or any other such entity.

(i) "Recreational Purposes" shall mean and include activities such as picnicking and engaging in sporting activities, walking, riding of non-motorized vehicles and such other activities as may be delineated by the Board of Directors of the Association from time to time.

(j) "Restricted Property" shall mean and refer to all real property as set forth in Article 2 of this Declaration and any additional real property added to the jurisdiction of the Association pursuant to Article 2, Section 2 of this Declaration.

(k) "Residential Units" shall mean and refer to each single family detached house and/or each single lot of subdivided property intended for a single family detached house or any other equivalent form of residential building.

(l) "Architectural Review Committee" shall mean Bentwater Architectural Review Committee and all references herein to "ARC" or "Review Committee" or "Architectural Review Committee" or "Architectural Control Committee" are to this committee.

## **ARTICLE 2**

### **PROPERTY SUBJECT TO DECLARATION: EFFECT THEREOF**

**2.01 Property Hereby Subjected to This Declaration.** This Declaration is hereby imposed upon the following described real property and the Developer hereby subjects the following described property to this Declaration, which shall hereafter be held, transferred, sold, conveyed, used, leased, occupied and mortgaged or otherwise encumbered subject to this Declaration:

#### ARTICLE 4

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#### COVENANTS AND RESTRICTIONS TO RUN WITH THE LAND

All of the covenants, restrictions, reservations and servitudes of these covenants shall run with the land, and each Lot Owner, by accepting the deed to a Lot, accepts the same subject to such covenants, restrictions, reservations and servitudes and agrees for himself, his heirs, administrators, and assigns to be bound by each of such covenants, restrictions, reservations and servitudes jointly, separately and severally.

#### ARTICLE 5

#### DURATION OF COVENANTS, RESTRICTIONS, RESERVATIONS AND SERVITUDES

The Covenants and Restrictions of this Declaration shall run with and bind the Subdivision, and shall inure to the benefit of and shall be enforceable by the Association or any Lot Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent provided by law; provided, however, so long as Georgia law limits the period during which covenants restricting land to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, after which time, any such provisions shall be (a) automatically extended (to the extent allowed by applicable law) for successive periods of ten (10) years, unless a written instrument reflecting disapproval signed by a majority of the then Lot Owners has been recorded within the year immediately preceding the beginning of a ten (10) year renewal period agreeing to change such provisions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated to the extent specified therein; or (b) extended as otherwise provided by law. Every purchaser or grantee of any interest (including, without limitation, a security interest) in any real property subject to this Declaration, by acceptance of a deed or other conveyance thereof thereby agrees that such provisions of this Declaration may be extended and renewed as provided in this Section.

#### ARTICLE 6

#### PERMITTED AND PROHIBITED USES

6.01 Division of Lots Prohibited. No Lot shall be resubdivided, nor a part thereof sold separately, without the written approval of the Review Committee.

6.02 Through Access Prohibited. No Lot shall be used to provide public access from a public street to other property adjacent to the Lot

6.03 Underbrush, Refuse Piles. No unsightly growth shall be permitted to grow or remain on any Lot, and no refuse pile or unsightly object shall be allowed to be placed or suffered to remain anywhere thereon at any time.

6.04 Land Elevations and Changes. No changes in the contours or elevations of any Lot shall be made without the approval of the Review Committee.

6.05 Single Family Residences. Lots may be used only for single family residential purposes with outbuildings which are constructed and located according to the terms of these Covenants. One Lot shall be the minimum building area upon which a single family residence and outbuildings may be constructed.

6.06 Garages. The garage or garages, which must be at least a double garage, shall be for the use only of the occupants of a residence on the Lot to which such garage is appurtenant, may be attached or detached from the residence and may not have entrances facing any street, unless garage doors have an architectural design flair and have been approved by the Architectural Review Committee. Detached or free standing garages are prohibited except upon approval of the Review Committee.

6.07 Residential Use. Except as provided in Paragraph 6.10 hereof, no Lot shall be used or occupied by other than a single family and no Lot shall be used for other than residential use.

6.08 House and Site Additions. No addition to a house shall be made unless the exterior material is the same or substantially the same as the original structure without the prior written approval of the Review Committee, as defined in Article I thereof.

6.09 Outbuildings. No outbuilding, storage facility, dog house or similar structure, shall be constructed on any Lot unless such structure has exterior covering the same or substantially the same as the exterior covering of the residence and screened from any street or amenity, without the prior written approval of the Review Committee.

6.10 Profession, etc. Subject to the prior and continuing written approval of the Review Committee, a resident may be allowed to practice an occupation, profession, or trade from a residence, provided that such practice does not detract from the residential nature of the Subdivision nor intrude upon other Lot Owners in the quiet enjoyment of their Lot, and further provided that the following restrictions shall be observed.

- (a) No signage of any type shall be permitted on any Lot
- (b) The occupation shall not be such as to invite the general public or generate significant motor traffic in the Subdivision.
- (c) The occupation shall not generate any noise in the Subdivision which in its nature or volume is not compatible with normal residential usage.
- (d) No storage of business-related items is allowed outside the residence on any Lot.
- (e) No business equipment or commercial vehicles over six wheels shall be parked on any Lot, other than one automobile personally driven by the resident.
- (f) The occupation or profession shall be practiced from the residence itself, and no barns, sheds or other outbuildings shall be used in connection with the practice of any occupation, profession or trade on any Lot.

6.11 Leasing. Lots may be leased for residential purposes. All leases shall have a minimum term of at least six (6) months. All leases shall require, without limitation that the tenant acknowledge receipt of a copy of the Declaration, Bylaws, use restrictions, and rules and regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing and shall provide that in the event of noncompliance, the Board, in addition to any other remedies

available to it, may evict the tenant on behalf of the Lot Owner and specifically assess all costs associated therewith against the Lot Owner and the Lot Owner's property. No lot or lots shall be purchased with a speculative intent to lease or lease-purchase.

6.12 Occupants Bound. All provisions of the Declaration, Bylaws, and of any rules and regulations, use restrictions or design guidelines promulgated pursuant thereto which govern the conduct of Lot Owners and which provide for sanctions against Lot Owners shall also apply to all occupants even though occupants are not specifically mentioned. Fines may be levied against Lot Owners or occupants. If a fine is first levied against an occupant and is not paid timely, the fine may then be levied against the Lot Owner.

6.13 Nuisance. It shall be the responsibility of each Lot Owner and occupant to prevent the development of any unclean, unsightly, or unkempt condition on 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 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 within the Subdivision, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any property within the Subdivision. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Subdivision. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed, or maintained upon the exterior of any Lot unless required by law.

6.14 Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken in any part of the Subdivision.

6.15 Guns. The use of firearms in the Subdivision is prohibited. The term "firearms" includes without limitation "B-B" guns, pellet guns, and firearms of all types.

6.16 Oil/Mining. No oil drilling or refining, quarrying, or mining operations of any kind shall be permitted on or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon, under, or in any lot.

6.17 Livestock/Poultry/Animals. No animals, other than a reasonable number of generally recognized house pets shall be maintained on the property and then only if kept thereon solely as household pets and for no other purposes. The amount of pets a household is allowed is to be decided upon by the Review Committee on a case by case basis. No such animal shall be allowed to make an unreasonable amount of noise or otherwise become a nuisance. The Review Committee shall determine at its sole discretion whether, for purposes of this paragraph, a particular animal is considered a house pet, a nuisance, or whether the number of animals on the property is reasonable. Such animals shall be kept within the fences or houses, except when under physical control.

## ARTICLE 7

### ARCHITECTURAL REQUIREMENTS

(a) Approval. No building, structure, deck, patio, porch, covered walk, arbor, sidewalk, driveway, exterior lighting, outbuilding, fence, gate, wall, exterior whirlpools, swimming pool, or any other improvement or major landscaping shall be erected, placed or altered on any Lot unless and until the Lot Owner shall (i) submit to the Architectural Review Committee two (2) sets of complete, final, detailed construction plans and specifications showing the nature, kind, shape, height, location, materials, exterior finish and colors, floor plans, front, side and rear elevations, site location with respect to topography and finish grade elevation, landscape plan and ground stabilization plan of all improvements and structures, and (ii) the Lot Owner shall have received full and complete written approval of all such matters from the Architectural Review Committee. Such Plans should be submitted thirty (30) days prior to the commencement of construction to Bentwater Architectural Review Committee, 2030 Oak Grove Road, Carrollton, GA 30117. The Architectural Review Committee shall approve the type, method and color of the exterior finish and trim work. The exact location of the proposed structure shall be subject to the approval of the Architectural Review Committee. The Contractor must likewise be approved in writing by the Architectural Review Committee. One (1) copy of such plans and specifications shall be filed permanently with the Architectural Review Committee. The architectural style of the Subdivision shall be reviewed and approved in writing by the Architectural Review Committee.

(a) Verification of Approval. In the discretion of the Architectural Review Committee, a Lot Owner may be made to verify such condition of approval by a recordable written instrument acknowledged by such Lot Owner on behalf of such Lot Owner and such Lot Owner's successors-in-interest. The Architectural Review Committee shall be the sole arbiter of such plans and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. Any member of the Board or its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property to inspect for the purpose of ascertaining whether or not these Covenants have been or are being complied with. Such person shall not be deemed guilty of trespass by reason of such entry. In addition to any other remedies available to the Association, in the event of noncompliance with the Section, the Board may, as provided in Section 17.01 hereof, record in the appropriate land records a notice of violation naming the violating Lot Owner.

PLANS AND SPECIFICATIONS ARE NOT APPROVED FOR ENGINEERING OR STRUCTURAL DESIGN OR QUALITY OF MATERIALS, AND BY APPROVING SUCH PLANS AND SPECIFICATIONS NEITHER THE ARCHITECTURAL REVIEW COMMITTEE, THE MEMBERS THEREOF, NOR THE ASSOCIATION ASSUMES ANY LIABILITY OR RESPONSIBILITY THEREOF, NOT FOR ANY DEFECT IN ANY STRUCTURE CONSTRUCTED FROM SUCH PLANS AND SPECIFICATIONS. NEITHER DEVELOPER, THE ASSOCIATION, THE ARCHITECTURAL REVIEW COMMITTEE, 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 LOT 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 LOT OWNER AGREES THAT SUCH PERSON OR LOT OWNER WILL NOT BRING ANY ACTION OR SUIT AGAINST DEVELOPER, THE ASSOCIATION, THE ARCHITECTURAL REVIEW COMMITTEE, THE BOARD, OR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, AND AGENTS OF ANY OF THEM TO RECOVER ANY DAMAGES AND HEREBY RELEASES, REMISES, QUITCLAIMS, AND COVENANTS NOT TO SUE FOR ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION ARISING OUT OF OR IN CONNECTION WITH ANY JUDGMENT, NEGLIGENCE, OR NONFEASANCE AND



HEREBY WAIVES THE PROVISIONS OF ANY LAW WHICH PROVIDES THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS, DEMANDS, AND CAUSES OF ACTION NOT KNOWN AT THE TIME THE RELEASE IS GIVEN. MAY 860 PAGE 415

7.02 Construction Completion. All construction of any structure or improvement on any Lot including all Landscaping shall be completed within twelve months following the commencement of any aspect of the construction of such structure or improvements.

7.03 Approval. If the Architectural Review Committee fails to approve or disapprove in writing any plans and specifications within thirty (30) days after receipt thereof, the plans and specifications shall be deemed approved. Any substantial changes in any proposed construction plans, or any additions thereto including exterior finish and color after the initial approval by the Architectural Review Committee, must be resubmitted to the Architectural Review Committee for its approval or rejection in accordance with the procedure set forth in this Paragraph prior to the construction in regard to any such proposed changes or additions.

7.04 Dwelling Size. The floor area of the heated main structure of any residence, exclusive of porches, garages and basements, shall be not less than the following:

- (a) Single Story Building - 1600 heated square feet
- (b) Two Story Building - 2000 heated square feet with a minimum of 1400 square feet on the first floor; finished area in the basement and rooms over garages or porches which are not connected to the heated area via a heated enclosed hallway are not included in the minimum square footage.

7.05 Exposed Masonry Block. All residences will be constructed on crawl space and/or basements. No masonry block or poured concrete shall be exposed to view.

7.06 Building Set Back Line. No building or structure shall be erected upon any lot in said subdivision which is less than 30 feet from the right of way of any street bordering said lot and which is closer than 10 feet from the sideline of any lot, nor shall any structure be constructed which is less than 20 feet from the back line of any lot, nor 100 feet from creek. Provided, however, that in instances wherein the shape and configuration of the lot dictate otherwise, the Architectural Control Committee may approve and waive said set-back provision. For the purpose of this provision, building shall mean, and include, the main portion of any structure built for permanent use and all projections or extensions thereof, including an attached garages or carport, outside platforms or docks, canopies, balconies and porches, but excluding open steps leading to the building.

7.07 Roof Pitch. The minimum pitch of roofs shall be eight to twelve, except the Architectural Review Committee may approve roofs with less pitch in the instances of covered porches, decks, porticos, and certain architectural styled homes. Shingles must be of architectural type.

7.08 Exterior Appliances. All gas and electric meters, heat pumps, or other heating or cooling devices shall be placed to the rear or side of the residence and hidden or screened from view. No plumbing vent shall be visible from the front side of any roof. No window air conditioning units shall be installed on the front of any house or facing any street within the Subdivision.

7.09 Construction Debris. During the construction of any structure or improvement on any Lot, the Lot Owner and its contractors, agents, or employees shall keep such Lot in a reasonably neat and clean condition. All waste material shall be removed from the Lot in a prompt and efficient manner. If, during construction, a Lot is not kept in a clean and neat condition, upon ten (10) days written notice, the Architectural Review Committee may have the Lot cleaned at the Lot Owner's expense. Concrete trucks shall be washed on the Lot on which the concrete from such truck was poured or

placed.

**7.10 Silt Screen.** During construction, the use of silt screen is required to prevent run off of soil into the street, drainage ditches, streams, lakes, and adjoining Lots. Any silt leaving any lot shall be removed by lot owner immediately. Silt screen shall be used and maintained by lot owner and/or Builder immediately upon possession of Lot.

**7.11 Underground Utility Lines.** All telephone, cable television, community antenna and utility lines shall be placed and maintained underground.

**7.12 Driveways.** All driveways shall be a minimum of (10) feet in width and have a hard surface treatment of concrete from the curb at the street back to the Right of Way. Driveways from that point shall either continue as concrete, asphalt, blacktop, or other material authorized and approved in writing by the Architectural Review Committee.

**7.13 Sidewalks.** All walkways leading to a residence from a street or driveway shall be hard surfaced with concrete, asphalt, blacktop, or other material authorized and approved in writing by the Architectural Review Committee. Each Lot Owner is required to construct a sidewalk along the front of the property (from property line to property line). Sidewalks shall be 4" thick and 4' wide with construction joints at 4' on center.

**7.14 Fences and Walls.** Prior to the construction of any fence or wall on any Lot, the plans, including materials to be used in construction and type of fence or wall and the location of the fence or wall on the Lot, must be submitted by the Lot owner in writing to the Architectural Review Committee for approval. Fences or walls erected in the rear or side yard shall not be higher than five (5) feet, unless approved by the ARC. The intent of this Paragraph is to insure that fence structures do not detract from the overall decor of the Subdivision and that only decorative fencing shall be allowed. In no event shall any "fence be allowed in front yards. No chain link or other types of metal fencing shall be allowed unless approved by the ARC. The size, type of materials and location of walls that form courtyards and are part of main structures shall be subject to approval of the ARC. Vinyl coated chain link fencing may be permitted in the discretion of the ARC.

**7.15 Landscaping.** The Lot Owner shall plant sod from the back of the curb to a minimum of twenty-five feet behind the curb. All foundation areas exposed to any road shall have shrubbery foundation cover. Natural areas shall be cleared of brush and have natural leaves or pine straw as ground cover. Shrubby may be planted within this area. All exposed areas of yards shall be manicured grass or ground cover. A landscaping plan and allowance must be submitted along with the plans and specifications for approval by the ARC prior to beginning of construction.

**7.16 Mail Boxes.** Mail boxes shall be selected, placed, and maintained to compliment the Subdivision. Each Lot Owner shall furnish and install a mailbox approved by the Architectural Review Committee. Lot Owner to maintain this design unless changed by the POA. Plans and specifications shall be submitted to the ARC as provided in Section 7.01 hereof, and its location shall be subject to approval by the ARC.

**7.17 Signs.** No sign of any kind shall be erected on any Lot without the prior written consent of the ARC. The Developer shall have the right to erect reasonable and appropriate signs. "For Sale" and "For Rent" signs and security signs and any signs required by legal proceedings may be erected upon any Lot. Signs must not exceed five (5) square feet in size.

**7.18 Garbage Receptacles.** Each residence shall provide suitable garbage receptacles for household garbage only, which garbage receptacles shall (except to facilitate pickup), be screened from view from the street, any amenity or adjoining Lot. The receptacles shall be kept in a clean, neat, and sanitary condition.

7.19 Clothes Lines. No clothes lines are permitted on any Lot.

7.20 Dog House or Pens. No dog house or pen shall be constructed on any Lot without the prior written approval of the ARC and, if approved, shall be located as to be screened from view from the street, any amenity or adjoining Lot.

7.21 Recreational Vehicles or Trailers. One recreational vehicle, trailer, or pleasure boat on its trailer may be kept in an enclosed garage or parked or stored on that portion of a Lot beyond the front building line and to the rear of the residence.

7.22 Temporary Buildings. No temporary building or other improvements of a temporary nature including trailers, basements, tents, shacks or portable buildings shall be permitted on any Lot. Temporary improvements of trailers used solely in connection with the construction of permanent improvements may be permitted, provided they are located as inconspicuously as possible, are removed immediately after completion of such construction, and are not used as a temporary residence.

7.23 Antennas and Cable Television. With the exception of satellite dishes 24 inches in diameter and smaller, exterior antennas of any type, including television, radio or satellite dish antennas shall not be installed on any Lot. Any permitted antenna shall have its placement approved by the Architectural Review Committee.

7.24 Solar Energy Panels. No solar energy panels may be erected on the side of any roof visible from a public street unless approved in writing by the Architectural Review Committee.

7.25 Parking. Each Lot shall have within its boundaries parking space surfaced with the same type hard surface that is utilized for the driveways on such Lot adequate to accommodate all vehicles of occupants customarily visiting or serving the residence located thereon on a daily or weekly basis. In no event shall any vehicles be parked regularly on a daily or weekly basis on any public street or right-of-way.

7.26 Occupancy. No residence shall be occupied until construction is completely finished on exterior in accordance with the plans approved by the Architectural Review Committee and until the entire yard which is visible from any street is planted with grass or sod in accordance with these covenants, and the driveway has been paved. The Architectural Review Committee may provide an extension of up to (90) days after the Lot Owner has occupied the residence to complete landscaping, in the event that weather conditions prohibit or are not conducive to completion of such landscaping.

7.27 Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

7.28 Artificial Vegetation, Exterior Sculptures, etc. No artificial vegetation shall be permitted on the exterior of any property. Exterior sculpture, fountains, flags, and similar items must be approved by the Architectural Review Committee.

7.29 Exteriors. Any change to the exterior color of any improvement located on a Lot, including, without limitation, the dwelling, must be approved by the Architectural Review Committee. The ARC shall have the right to limit the construction of the same or essentially same exterior designs within the community.

i. Roofing Materials. Must be fiberglass or asphalt shingles in colors and textures to complement the colors and materials selected for the residence, or otherwise approved by the ARC.

- i. Colors. Siding, stucco, and trim colors' must be confined to conservative, traditional tones.
- ii. Siding. Vinyl and aluminum siding are prohibited. All exterior siding shall be consistent on all sides of the home. Large sheets (ex. 4 X 8) of any type siding are prohibited.
- iii. Sheet Metal and PVC. Roof caps, flashings, plumbing vents, and chimney caps must be painted to match the roof colors. Roof stacks and plumbing vents must be placed on the rear slopes of roofs. Gutters and downspouts must be painted approved colors.
- iv. Windows. Windows, doors, louvers, window and door screens must be in colors compatible with primary and trim colors. Material must be wood, aluminum, vinyl, or clad.
- v. Chimneys. Chimneys framed to receive prefabricated fireplaces and flues must not appear cantilevered from the unit. They must be continuous to finish grade or terminated at a deck. All chimneys must be masonry veneer.
- vi. Decks. Vertical supports for wood decks must be a minimum 6" X 6" wood post or metal poles boxed in as to appear to be a 6" X 6" wood post. Wood deck rails must be in keeping with the style of the house and must be painted or stained. Pre-colored plastic, vinyl, aluminum, or other materials must be or a color to compliment the residence.
- vii. Swimming Pools. Must be in ground and fit naturally into the topography of the proposed lot and be located to provide minimal visual impact to surrounding properties and streets. All pumps, filters, and equipment for pools must be sited where it will not cause a nuisance to neighbors and must be screened from view.
- viii. Hot tubs and Jacuzzis. Exterior hot tubs must be screened from adjacent properties and streets. All equipment for such spas must be sited where it will not cause a nuisance to neighbors and must be screened from view.
- ix. Exterior Lighting. All exterior lighting should be a low level, non-glare type and located to cause minimum visual impact to adjacent properties and streets.
- x. Tennis Courts. Will be permitted only where they will fit naturally onto the topography of the proposed lot and located to provide minimal visual impact to surrounding properties. Chain link fencing for courts must have a black or dark green vinyl coating. Lighting for tennis courts will not be allowed.
- xi. Pre-fabricated Residences will not be allowed.

7.30 Treesave. This section does not apply to Bentwater Subdivision.

7.31 Stream Buffers. No houses shall be built within the stated stream buffers on site plan.

## ARTICLE 8

### ARCHITECTURAL REVIEW COMMITTEE

8.01 Architectural Review Committee Created. There has been a committee created known as Bentwater Architectural Review Committee. The committee shall be comprised of three members selected by the Developer, with two members to be Lot Owners and one member to be

a Developer's representative.

8.02 Submission of Information. Submission of information herein required, until further notice, shall be accomplished by delivering the same personally to any member of the ARC or by mailing the same by United States mail to the ARC at the following address:

Bentwater Architectural Review Committee

2030 Oak Grove Road

Carrollton, GA 30117

8.03 Death or Resignation. In the event of the death or resignation of any member of the ARC, the remaining member or members shall have full authority to designate a successor.

8.04 Additional Members. The member(s) of the ARC, from time to time, shall further be empowered to designate and name additional members to the ARC who shall be either Lot Owners or spouses of Lot Owners.

8.05 No Lot Owners - Election. If, at any time, there are no Lot Owners serving as an Architectural Review Committee, the ARC may be reconstructed by petition or election of members of the Committee by Lot Owners owning two-thirds of the Lots within the Subdivision.

8.06 No Existence of Committee. If, at any time, the Architectural Review Committee has ceased to exist as such and no members have been selected as provided herein, the need for an Architectural Review Committee approval shall not be required.

## ARTICLE 9

### STREETS, EASEMENTS, AND RIGHTS-OF-WAY

9.01 Streets. Developer will dedicate any street built within the Subdivision to The City of Bremen, which shall be responsible for the maintenance and upkeep of same. Developer has reserved certain easements and rights-of-way for utilities, drainage, pedestrian and access easements as may be shown or stated on the Plat. Developer further reserves an easement for said utilities and drainage purposes 10 feet in width along the right-of-way of all streets and 10 feet in width on center of all ditches, side lot lines and rear lot lines, unless delimited otherwise on the Plat.

9.02 Pedestrian Easement or Access Easements. Any area shown as pedestrian easements or access easements on the Plats are for the benefit and use only of residents owning or occupying lots within the Subdivision and their invitees. The pedestrian and access easements shall in no event be used for any other purpose, other than pedestrian use or for utilities, and use of the easements for motorized vehicular travel or for any other purpose other than foot or nonmotorized bicycle traffic or utility or drainage use, is expressly prohibited.

9.03 Utility or Drainage Easements. The pedestrian and access easements reserved herein and any utility or drainage easements may be used for the installation, maintenance, repair and replacement or electrical, gas, water, cable television or community antenna or drainage purposes.

9.04 Utilization of the Easements. No structures, including walls, fences, paving, or planting shall be erected upon any Lot which will interfere with the utilization of the easements reserved herein.

**ASSESSMENTS FOR MAINTENANCE OF LOTS, STREETS,  
EASEMENTS, AMENITIES AND OTHER PUBLIC SERVICES**

**10.01 Creation of the Lien or Personal Obligation for Assessments.** Each Class A and Class B member, by acceptance of a deed or other conveyance for any Residential Unit in the Restricted Property, whether or not it shall be so expressed in any deed or other conveyance, shall be deemed to covenant and agreed to pay the Association:

(a) Annual assessments and charges and

(b) Special assessments; such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interests thereon and cost of collection thereof as hereinafter provided shall be a charge on the land, shall be a continuing lien upon the property against which each such assessment is made and shall also be the personal obligation of the person who is the record owner of the property at the time the assessment fell due.

**10.02 Purpose of Assessment.** The assessments levied under this Article shall be utilized to pay for the costs of maintaining, repairing and operating any amenities established by the Developer or the Association for use by Lot Owners, and for the maintenance, upkeep, landscaping and improvement thereof, and of road sides and easements and to provide public services, including but not limited to, street lighting and lighting of easements and Amenities.

**10.03 Assessment Limited.** The Assessment from the date hereof shall be Thirty and No/100 Dollars (\$30.00) per month per Lot, payable quarterly to the association, provided such amount may be increased by a vote of sixty percent (60%) of the Lot Owners and any increase in the monthly payment shall not exceed ten percent (10%) of the amount of the monthly Assessment assessed at the end of the previous calendar year, unless an increase in excess of ten percent (10%) is approved by the vote of eighty percent (80%) of the Lot Owners. The Assessment shall be held separately by the Association and shall only be used for the purposes set forth herein. In addition, if construction is not commenced upon any Lot within 90 days of purchase, Lot Owner agrees to pay to Developer an additional \$15.00 per month for right of way upkeep. Said fee shall continue until construction commences.

**10.04 Assignment to Association.** Developer has transferred and assigned the right and duties to collect the Assessment to the Association and all Lot Owners shall pay the Assessment to the Association.

**10.05 No Assessment Against Lot with Unoccupied House Held by Builder.**

Notwithstanding any other provision of the Article or those Covenants, a builder who owns a Lot shall not be liable to pay any Assessment against that Lot for the period of time beginning with the start of construction on the Lot of a residence for sale, and ending on the first to occur of (i) the date on which the Lot is sold to a third party, (ii) the date on which the residence is first occupied, or (iii) the first day of the thirteenth full calendar month following the issuance of a certificate of occupancy for the residence constructed on such Lot.

**10.06 Lien for Assessments.** All sums assessed against any Lot pursuant to this Declaration, together with late charges, interest, costs, including, without limitation, reasonable attorney's fees actually incurred, as provided herein, shall be secured by a lien on such Lot in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Lot, except for (a) liens for ad

valorem taxes; or (b) the lien of any first priority mortgage covering the Lot and the lien of any mortgage recorded prior to the recording of this Declaration; or (c) 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.

10.07 Effect of Nonpayment of Assessments: Remedies of the Association. The personal obligation of the Lot Owner and the lien for Assessments shall also include:

- (a) A late or delinquency charge not in excess or the greater of \$10.00 or ten percent (10%) of the amount of each Assessment or installment thereof not paid when due;
- (b) At a rate not in excess of ten percent (10%) per annum, interest on each Assessment or installment thereof any delinquency or late charge pertaining thereto from the date the same was first due and payable;
- (c) The costs of collection, including court costs, the expenses required for the protection and preservation of the Lot, and reasonable attorney's fees actually incurred; and
- (d) The fair rental value of the Lot from the time of the institution of an action until the sale of the Lot at foreclosure or until judgment rendered in the action is otherwise satisfied.

Not less than ten days after notice is sent by certified mail, return receipt requested, to the Lot Owner both at the address of the Lot and at any other address or addresses which the Lot Owner may have designated to the Association in writing, the lien may be recorded on the real estate records of Carroll County and foreclosed by the Association by an action, judgment, and foreclosure in the same manner as other liens for the improvement of real property. The notice shall specify the amount of the Assessments then due and payable together with authorized late charges and interest accrued thereon. The Association shall have the power to bid on the lot at any foreclosure sale and to acquire, hold, lease, encumber, and convey the same. The lien for Assessments shall lapse and be of no further effect, as to Assessments or installments thereof, together with late charges and interest applicable thereto, which first become due and payable more than three years prior to the date upon which the notice contemplated in this subsection is given or more than three years prior to the institution of an action thereof if an action is not instituted within 90 days after the giving of the notice. In the event that the Assessment remains unpaid after sixty (60) days, the Association may, as the Board shall determine, institute suit to collect such amounts and/or to foreclose its lien. Each Lot Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against such Lot Owner personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this article shall be in favor of the Association and shall be for the benefit of all other Lot Owners.

No Lot Owner may waive or otherwise exempt himself from liability for the Assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot. No diminution or abatement of any Assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay Assessments being a separate and independent covenant on the part of each Lot Owner. All payments shall be applied first to costs, then to late charges, then to interest and then to delinquent Assessments.

10.08 Date of Commencement of Assessments. The Assessments provided for herein shall commence as to a Lot subject to this Declaration on the first day of the month following the conveyance of such Lot to a person who has purchased such Lot for the purpose of construction of a residence and resale of such Lot and residence. Assessments shall be due and payable in a manner and on schedule as the Board may provide. Lots which have not been so conveyed shall not be subject to Assessment. The first annual assessment shall be adjusted according to the number of months then remaining in the fiscal year.

## ARTICLE 11

### EXPANSION

#### 11.01 Unilateral Annexation By Declarant.

- a. As the owner thereof or, if not the owner, with the consent of the owner thereof, Developer shall have the unilateral right, privilege, and option from time to time at any time until ten (10) years after the recording of this Declaration to subject additional properties to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the county in which the property to be annexed is located a Supplementary Declaration describing the property being subjected. Any such annexation shall be effective upon the filing for record of such Supplementary Declaration unless otherwise provided therein. As long as covenants applicable to the real property previously subjected to this Declaration are not changed and as long as rights of existing Owners are not adversely affected, the Developer may unilaterally amend this Declaration to, reflect the different character of any such annexed real property.
- b. The rights reserved unto Developer to subject additional land to the Declaration shall not impose any obligation upon Developer to subject any of such additional land to this Declaration or to the Jurisdiction of the Association. If such additional land is not subjected to this Declaration, Developer's reserved rights shall not impose any obligation on Developer to impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Developer or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.
- c. 11.02 Other Annexation. Subject to the consent of the owner(s) thereof, the consent of the Developer (so long as the Developer owns any property for development and/or sale in the Community or has the right to unilaterally annex additional property to the Community) and upon the affirmative vote or written consent, or any combination thereof, of the Owners of at least two-thirds (2/3) of the Lots, the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the county in which the property to be annexed is located a Supplementary Declaration describing the property being annexed. Any such Supplementary Declaration shall be signed by the President of the Association whose signature shall be attested by the Secretary of the Association, and any such annexation shall be effective only upon the filing for record of such Supplementary Declaration, unless a later effective date is provided. Q|erein.

## ARTICLE 12



COVENANTS AND RESTRICTIONS, MEANS OF ENFORCEMENT.ENFORCEABILITY, JOINTLY AND SEVERALLY

12.01 Independent and Separate. Each and every one of the Covenants shall be considered to be an independent and separate covenant and agreement and, in the event anyone or more of such Covenants shall for any reason be held to be invalid or unenforceable, all remaining Covenants shall nevertheless remain in full force and effect.

12.02 Enforceable. These Covenants are enforceable by any Lot Owner and by the Developer.

12.03 Injunction. Suit for Specific Performance, etc. It is agreed that in the event of a violation of any of the Covenants, the economic detriment to any party hereto shall be indefinite and incapable of determination and that these Covenants, therefore, may be enforced in equity by injunction, restraining order or by suit for specific performance.

12.04 Attorney's Fees. In the event that any party hereto successfully institutes an action for enforcement, resulting in a final judgment or decree of injunction, specific performance or providing for monetary damages, the party violating such Covenant shall pay all costs of the Court and reasonable attorney's fees associated with the institution and prosecution of such action.

12.05 Failure to Complete Building. If a building is not completed within twelve (12) months as required in Section 7.02 hereof, any party entitled to enforce these Covenants may complete the building, in which event, the owner of the Lot on which the building is located does hereby covenant to pay the cost of completing the building and interest at the rate of twelve (12%) percent per annum to the person, corporation or association completing the building and the person, corporation or association completing the building shall also be entitled to file a Title Affidavit in the Office of the Clerk of the Superior Court of Haralson County, Georgia, setting forth the cost of the completion and describing the Lot on which the building is located and the lot shall thereafter be subject to a lien for the cost and interest at twelve (12%) percent.

ARTICLE 13AMENDMENTS AND WAIVER

13.01 Amendment. These Covenants may only be amended in accordance with the following requirements and procedures.

- a. Any such amendment must be approved by the Lot Owners of two-thirds of the Lots within the Subdivision, as now constituted or as expanded, and, so long as Developer shall own any Lot in the Subdivision, by Developer. Such amendment shall be effective only upon one of more record Lot Owners (including the Developer) executes a Title Affidavit setting forth the Amendment and attaching the written approval of said Amendment signed by the requisite number of record Lot Owners and, if applicable, the Developer, and recording the same in the Public Real Estate Records of Haralson County, Georgia.
- b. Notwithstanding the foregoing, the Developer, so long as it has record title to more than 10% of the Lots in the Subdivision, reserves the right at any time to amend these Covenants and/or the Plats as may be required by any lending institution or public body, or in such manner as the Developer may determine to be necessary to carry out the purposes in such a way as to be beneficial to the Lot Owners or to further clarify and to explain the obligations, responsibilities and

limitations of the Lot Owners pursuant to these Covenants.

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13.02 Waiver. The Architectural Review Committee may grant waivers from these Covenants, in instances where unique and unusual circumstances prevail that would cause significant economic loss on the part of a Lot Owner to comply with these Covenants; provided, that no waiver shall be effective unless written notice thereof is mailed, postage prepaid, to all Lot Owners within fifteen (15) days prior to the granting of said waiver.

13.03 Amendment by Developer. This Declaration may be amended unilaterally at any time and from time to time by Developer (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser 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 the Lots subject to the Declaration; or (d) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure or guarantee mortgage loans on the Lots subject to this Declaration; provided, however, any amendment shall not adversely affect the title to any Lot Owner's Lot unless any such Lot Owner shall consent thereto in writing.

## **ARTICLE 14**

### **CAPTIONS**

The captions to the paragraphs provided here are only to aid the reader in locating the general subject matter of the paragraphs and do not in any way alter, amend, limit or expand the content of any paragraph.

## **ARTICLE 15**

### **MAINTENANCE, CONVEYANCE OF COMMON PROPERTY TO ASSOCIATION**

15.01 Association's Responsibility. The Association shall maintain and keep in good repair the real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment by the Lot Owners ("the Common Property"). This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and improvements situated on the Common Property for a period of at least 20 years. The Association shall also maintain (a) all entry features for the Subdivision, including expenses for water and electricity, if any; (b) any natural greenbelt area; (c) streetscapes and greenbelt originally installed by the Developer; (d) landscaping originally installed by the Developer whether or not such landscaping is on a Lot; (e) private streets or access roads; (f) all street signs originally installed by the Developer; (g) all pedestrian paths and sidewalks located on common property; (h) all storm water detention facilities serving the subdivision; and (i) all property outside of Lots located within the Subdivision which was originally maintained by the Developer. In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of any Lot Owner, or the family, guests, lessees, or invitees of any Lot

Owner, and is not covered or paid for by insurance, in whole or in part, then the Association may perform such maintenance, repair or replacement at such Lot Owner's sole cost and expense, and all costs thereof shall be added to and become a part of the Assessment to which such Lot Owner is subject and shall become a lien against the Lot of such Lot Owner.

The foregoing maintenance costs shall be assessed as a part of the General Assessment, as determined by the Board in accordance with the Declaration.

15.02 Lot Owner's Responsibility. Except as provided in Section 15.01 above, all maintenance of the Lot and all structures, parking areas, landscaping, and other improvements thereon shall be the sole responsibility "of the Lot Owner thereof, who shall maintain such Lot in a manner consistent with this Declaration. In the event that the Board determines that any Lot Owner has failed or refused to discharge properly any such Lot Owner's obligations with regard to the maintenance, repair, or replacement of items for which such Lot Owner is responsible hereunder, the Association shall, except in an emergency situation, give the Lot Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement at the Lot Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Lot Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair, or replacement, or, in the event that such maintenance, repair, or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Lot Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at such Lot Owner's sole cost and expense, and all costs shall be added to and become a part of the Assessment to which such Lot Owner is subject and shall become a lien against the Lot.

## ARTICLE 16

### INSURANCE AND CASUALTY LOSSES

16.01 Insurance on Common Property. The Board or the duly authorized agent of the "Association shall have the authority to and shall obtain or cause to be obtained insurance for all insurable improvements whether or not located on the Common Property which the Association is obligated to maintain. This insurance shall provide, at a minimum, fire and extended coverage, including vandalism and malicious mischief, 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. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

Premiums for all insurance shall be Association Expenses. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

All such insurance coverage obtained by the Board shall be written in the name of the Association, as trustee for the respective benefited parties, as further identified in subparagraph" (b), below. Such insurance shall be governed by the provisions hereinafter set forth;

- a. All policies shall be written with a company authorized to do business in Georgia.
- b. Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board; provided; however, no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

c. "In no event shall the insurance coverage obtained and maintained by the Board hereunder be brought into contribution with insurance purchased by individual Lot Owners, Occupants, or their mortgagees, and the insurance carried by the Association shall be primary.

d. All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available and all insurance policies shall be reviewed annually by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the county where the Subdivision is located.

e. The Board shall be required to make every reasonable effort to secure insurance policies that will provide for the following;

- i. a waiver of subrogation by the insurer as to any claims against the Board, its manager, the Lot Owners and their respective tenants, servants, agents, and guests;
- ii. Waiver by the insurer of its rights to repair and reconstruct instead of paying cash
- iii. that no policy may be canceled, invalidated, or suspended on account of any one or more individual Lot Owners;
- iv. that no policy may be canceled, subject to no renewal, invalidated, or suspended on account of any defect or the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Lot Owner or mortgagee;
- v. that any "other insurance" clause in any policy exclude individual Lot Owner's policies from consideration; and

vi. that no policy may be canceled, subjected to no renewal or substantially modified without at least thirty (30) days' prior written notice to the Association.

16.02 Individual Insurance. By virtue of taking title to a Lot subject to the terms of this Declaration, each Lot Owner acknowledges that the Association has no obligation to provide any insurance for any portion of individual Lots, and each Lot Owner covenants and agrees with all other Lot Owners and with the Association that each Lot Owner shall carry blanket 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, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or construction in the event of damage or destruction from any such hazard. If all-risk coverage is not reasonably available, Lot Owners shall obtain, at a minimum, fire and extended coverage. The policies required hereunder shall be in effect at all times. Authority to adjust losses under policies obtained by a Lot Owner shall be vested in the Lot Owner. The Association shall have the right, but not the obligation, at the expense of the Lot Owner, to acquire the insurance required to be maintained by the Lot Owner if the Lot Owner fails to provide a valid policy to the Association with a prepaid receipt within ten days after receipt by the Lot Owner of a written request from the Association. If the Association does not acquire insurance on behalf of any Lot Owner, the cost thereof shall be assessed against the Lot Owner and the Lot as a specific Assessment.

17.01 Enforcement. Each Lot Owner and occupant shall comply strictly with the Bylaws, the rules and regulations, the use restrictions, as they may be lawfully amended or modified from time to time, and with the covenants, conditions, and restrictions set forth in this Declaration and in the deed to such Lot Owner's Lot, if any. The Board may impose fines or other sanctions, which shall be collected as provided herein for the collection of Assessments. Failure to comply with this Declaration, the Bylaws or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board, on behalf of the Association, or, in a proper case, by an aggrieved Lot Owner. Failure by the Association or any Lot Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Board shall have the right to record in the appropriate land records a notice of violation of the Declaration, Bylaws, rules and regulations, use restrictions, or design guidelines and to assess the cost of recording and removing such notice against the Lot Owner who is responsible (or whose occupants are responsible) for violating the foregoing.

17.02 Self-Help. In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon any Lot or any other portion of the Subdivision to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates this Declaration, the Bylaws, the rules and regulations, or the use restrictions. Unless an emergency situation exists, the Board shall give the violating Lot Owner ten days written notice of its intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after reasonable notice. All costs of self-help, including, without limitation, reasonable attorney's fees actually incurred, shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of Assessments.

17.03 Financial Review. A review of the books and records of the Association shall be made annually in the manner as the Board may decide; provided, however, after having received the Board's financial statements at the annual meeting, by a majority of the Lot Owners, the Lot Owners may require that the accounts of the Association be audited as an Association expense by a Certified Public Accountant. 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 within ninety (90) days of the date of the request.

17.04 Notice of Sale Lease or Acquisition. In the event a Lot Owner sells or leases such Lot Owner's Lot, the Lot Owner shall give to the Association, in writing, prior to the effective date of such sale or lease, the name of the purchaser or lessee of the Lot and such other information as the Board may reasonably require. Upon acquisition of a Lot, each new Lot Owner shall give the Association in writing the name and mailing address of the Lot Owner and such other information as the Board may reasonably require.

17.05 Variances. Notwithstanding anything to the contrary contained herein, the Board 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 Subdivision.

IN WITNESS WHEREOF, the undersigned have executed this instrument the year and date first above written.

Signed, sealed and delivered  
In the presence of:

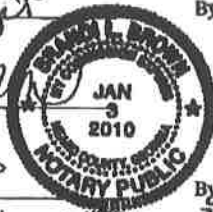
MCG Properties, LLC  
A Georgia Limited Liability Company

Bryant Wigg  
Witness

Brandi Brown  
Notary Public

Burt Wigg  
Witness

Brandi Brown  
Notary Public



By [Signature]  
Randy Simpkins, General Partner

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By [Signature]  
Larry Simpkins, General Partner

Please record and return to:  
Tisinger Vance, P.C.  
Attn: Stacey L. Blackmon  
100 Wagon Yard Plaza  
Carrollton, Georgia 30117

Cross-Reference:  
Deed Book 860, Page 407  
Haralson County Deed Records

State of Georgia  
County of Haralson

First Amendment to  
Declaration of Covenants, Conditions and Restrictions  
for Bentwater Subdivision and  
Bentwater Subdivision Property Association

THIS FIRST AMENDMENT is entered into as of the \_\_\_\_ day of \_\_\_\_\_,  
2011.

WHEREAS, MCG PROPERTIES, INC. (the "Developer" or the "Declarant") filed of record that certain Declaration of Covenants, Conditions and Restrictions for Bentwater Subdivision and Bentwater Subdivision Property Association dated May 19, 2006, recorded in Deed Book 860, Page 407, Haralson County Public Deed Records (the "Declaration"); and

WHEREAS, CharterBank foreclosed on all lots in the subdivision owned by Developer pursuant to a Deed Under Power by MCG Properties, LLC, acting through its duly appointed agent and attorney-in-fact, McIntosh Commercial Bank, as Grantor, and McIntosh Commercial Bank k/n/a CharterBank, dated July 6 2010, recorded in Deed Book 1014, page 597, Haralson County, Georgia Public Deed Records, as corrected by that certain Corrective Deed Under Power by MCG Properties, LLC, acting through its duly appointed agent and attorney-in-fact, CharterBank, as Purchaser from the Federal Deposit Insurance Corporation, receiver for McIntosh Commercial Bank, as Grantor, and CharterBank, as Purchaser from the Federal Deposit Insurance Corporation, Receiver for McIntosh Commercial Bank, dated June 13, 2011, recorded in Deed Book 1033, page 82, Haralson County, Georgia Public Deed Records;

WHEREAS, by virtue of the foreclosure, CharterBank stands in the position of the Declarant under the Declaration pursuant to O.C.G.A. Section 44-3-221(5); however, CharterBank is exempt from Assessments pursuant to Section 10.06 of the Declaration;

WHEREAS, at the request of two-thirds (2/3) of the other owners of lots, CharterBank is willing to subject additional land to the provisions of the Declaration provided that the Declaration is amended as set forth herein;

WHEREAS, Section 13.01 of the Declaration provides that the approval of owners of two-thirds (2/3) of the lots and the Declarant are required to amend the Declaration;

NOW THEREFORE, in consideration of the premises contained herein, the Declaration is hereby amended as follows:

1. Declarant, being the owner of all those tracts or parcels of land lying and being in Land Lots 226 and 227 of the 7th District, Haralson County, Georgia, being Lots 13-55 of the Bentwater Subdivision as shown on the plat of survey entitled "The Final Plat For Benwater Phase 2, prepared by Crawford & Associates, C. H. F., Inc. and certified by Douglas C. Crawford, Georgia Registered Land Surveyor No. 1833, dated December 18, 2006, revised January 2, 2007, recorded in Plat Book 40, page 40, Haralson County Records and by this reference made a part hereof (the "Property"), does hereby amend said Declaration to impose all of the covenants and restrictions contained in the Declaration upon said Property, as if said Property had originally been included in the Declaration as first recorded.

2. Section 10.05 of the Declaration is hereby deleted and the following is substituted in its place:

10.05 No Assessment Against Certain Lots Held by Declarant or Builders.  
Notwithstanding any other provision in this Declaration, neither Declarant nor any builder who owns a Lot shall be liable for any Assessments against such Lot until the earlier of (a) a residence is constructed on a Lot and sold by the Declarant or builder to a third party, (b) the date on which the residence on the Lot is first occupied, or (c) the first day of the 13<sup>th</sup> full calendar month following the issuance of a certificate of occupancy for the residence constructed on the Lot.

3. Article I of the Declaration entitled "Definitions" is here amended by adding the following definition to the end of said Article:

(m) "Lot" or "lot" shall mean a portion of the Property intended for ownership and use as a single-family dwelling site as permitted in this Declaration and as shown on the plats for the Property, including the plats for both Phase One and Phase Two of Bentwater Subdivision, or amendment or supplements thereto, recorded in Haralson County, Georgia public deed records, including without limitation the plats recorded at Plat Book 38, pages 134 – 135 and Plat Book 40, page 40, said records.

4. Except as provided herein, the Declaration shall continue in full force and effect.



5. This instrument shall be binding upon Declarant and all Lot Owners and their heirs, successors, personal representatives and assigns.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date first set forth above.

Signed sealed and delivered  
in the presence of:

CHARTERBANK

\_\_\_\_\_  
Witness

By: \_\_\_\_\_ (SEAL)  
James H. Chandler, Vice President

\_\_\_\_\_  
Notary Public

[Notary Seal]