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**DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS**

THE PROTECTIVE COVENANTS AND RESTRICTIONS set forth below are hereby declared as of the 23 day of Feb, 2006, by DMJ and Associates L.L.C. (hereinafter the "Declarant").

The Declarant is the initial owner of an industrial park known as DMJ Industrial Park ("Park"). Which is being developed on real property described in Article Two hereof and owned by Declarant in City of Oakwood, Georgia. Declarant believes the proper development of the Park attained by setting certain standards for the Park will be to the interest, benefit and advantage of each of the owners of Building Sites within the Park and the Declarant further believes that the establishment of such standards will assist it to promote a first class industrial park which will serve to attract and retain high quality industry within City of Oakwood. Accordingly, this Declaration includes restrictions, conditions, covenants and certain minimum standards required of all owners and users of the property located within the Park for the term hereof.

WHEREAS, Declarant desires to subject the real property described in Article Two of this Declaration (hereinafter the "Property") to these protective covenants, restrictions, hereinafter set forth, which are for the purpose of protecting the value and desirability of the Property;

NOW, THEREFORE, for and in consideration of the premises and in consideration of the benefits to be derived by Declarant and each and every subsequent owner of any part or all of the Park property, Declarant does hereby establish, promulgate and declare the following protective covenants, restrictions, easements, and assessments (sometimes referred to herein collectively as "Covenants and Restrictions"), to apply to each and every part of all the property which is subject to this Declaration and for the term hereof shall continue to apply whether or not the same is thereafter held, transferred, sold, conveyed, used, occupied, mortgaged or otherwise encumbered.

Every grantee of any interest in any part of the hereinafter described real property, which is hereby made subject to this Declaration, by acceptance of a deed or other conveyance of such interest, whether or not it shall be so expressed in any such deed or other conveyance, whether or not such deed or conveyance shall be signed by such person and whether or not such person shall otherwise consent in writing, shall take subject to this Declaration and to the terms and conditions hereof and will be deemed to have assented to said terms and conditions.

GEORGIA, HALL COUNTY, CLERK  
SUPERIOR COURT FILED IN OFFICE  
AND RECORDED IN BOOK 5606  
PAGE (S) 85-102 THIS 27  
DAY OF Feb 20 06 AT 10:17 AM  
DWIGHT S. WOOD, CLERK BY gc

**ARTICLE ONE**

**DEFINITIONS**

**Section 1.01 DEFINITIONS:**

As used herein, the following words and phrases shall have the respective meanings set forth below unless the context clearly indicated otherwise.

1. **Building Site.** "Building Site" shall mean each numbered lot, tract or parcel of real property which is a part of the Park. For the purposes hereof, any adjoining or contiguous property within the Park conveyed to an owner of a Building Site shall be deemed to be part of the Building Site owned by said owner. In the event a Building Site is subdivided by anyone other than Declarant, such smaller tracts shall not constitute a separate Building Site for purposes of voting under the provisions of this document.
2. **Park.** "Park" shall mean the Property and any other property which becomes subject to this Declaration by mutual written agreement of the owner thereof and the Declarant and which agreement is recorded in the records of the Superior Court of Hall County, Georgia.
3. **Declarant.** The "Declarant" shall mean DMJ and Associates, L.L.C., its successors and assigns.
4. **Improvements.** "Improvements" shall mean any and all Building Site developments, betterments, modifications and construction including, but not limited to, buildings, structures, walks, towers, tanks, patios, driveways, signs, docks, walls, fences, screens, parking areas, drainage and utility conduits, excavations and grading. Routine maintenance is not an improvement.
5. **Nuisance.** A "Nuisance" shall include, but not be limited to, any usage of a Building Site that:
  - (a) Materially obstructs or interferes with the reasonable or compatible use of another Building Site or which renders usage of the Building Site dangerous or damaging to persons or property thereon;
  - (b) Violates any federal, state, county or municipal law; or
  - (c) Violates, in whole or in part, the terms and conditions of these Protective Covenants and Restrictions.
6. **Occupant.** "Occupant" shall mean an entity or person, which may or may not also be an Owner and is in lawful possession or has the lawful right to use any Building Site or portion thereof.

7. **Owner.** "Owner" shall mean the record title holder, whether one or more persons or entities, of fee simple title to any Building Site or portion thereof located within the Park and shall include the owners' heirs, executors, administrators, successors and assigns but exclude those persons holding title thereto merely as security for the performance of one or more obligations. Notwithstanding the number of record title holders of a Building Site, for Purposes of any modification or amendment of this Declaration or other Required vote of consent of the Owners, each Building Site shall have only One (1) vote.
8. **Association** "Association" means the non-profit, non-stock membership Corporation to be organized under the Georgia Non-Profit Corporation Code and having the name DMJ and Associates Industrial Park Owner's Association, Inc. (or some other similar name), its successors and assigns.
9. **Board** "Board" means the Board of Directors of the Association. The Board Shall manage and control the affairs of the Association. The number of Directors and the method of election of Directors to the Board shall be set forth in the By Laws of the Association.
10. **Member.** "Member" shall mean any member of the Association.
11. **Mortgage.** "Mortgage shall mean any security instrument encumbering any Building Site, including but not limited to a mortgage, deed of trust or deed to secure debt.
12. "Areas of Common Responsibility" or "Common Areas" shall mean and include any parcels of land that are a part of DMJ and Associates Industrial Park and, from time to time, designated on any present or future plat or survey as "Common Areas" or "Areas of Common Responsibility," including, but not limited to, road right-of-way, utility or drainage easement areas, project entrances, and any other property or areas intended to be devoted either temporarily or permanently to the common use or enjoyment of the Owners of DMJ and Associates. "Common Areas" or "Areas of Common Responsibility" may also include portions of a Building Site which the Declarant or the Association, as applicable, with the consent of the Owner thereof has determined should be landscaped and maintained by the Declarant or the Association, as applicable. Title to "Common Areas" or "Areas of Common Responsibility" may be vested in a government entity, a utility provider, Declarant, the Association, or an Owner.
13. "Annual Assessments" shall mean, collectively, (i) an Owner's or Declarant's pro rata share of Common Area Costs as defined below and as set forth in Article Ten herein, and (ii) all other costs and expenses payable by an Owner or Declarant.
14. "Assessment Year" shall mean the Calendar year or such other period of twelve consecutive calendar months selected by the Declarant or the Board, as applicable, for the levy, determination and assessment of the annual Assessments.

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15. "Common Area Costs" shall mean the common expenses incurred by the Association or Declarant, as applicable, with respect to the Common Areas including, but not limited to, the expenses of maintenance, landscaping, operation, and repair of the Common Areas and Common Facilities, including, without limitation, (a) costs of labor, equipment, utilities, insurance, and materials incurred in connection therewith and (b) ad valorem real and personal property taxes assessed against the Common Areas and Common Facilities owned by the Association or Declarant, as applicable.
16. "Common Facilities" shall mean and include any and all improvements intended for the common use and enjoyment of the Owners and located on Common Areas, such as sidewalks and other pedestrian facilities, signage, landscaping, street lighting, and utility and drainage lines and pipes.
17. Committee. "Committee" shall mean the Architectural Review Committee Established pursuant to Article Four hereof.
18. Development Guidelines. "Development" shall mean the standard of Conduct, maintenance or other activity provided for DMJ Industrial Park under Article Four hereof.

## **ARTICLE TWO SUBJECT PROPERTY**

### Section 2.01 PROPERTY HEREBY SUBJECTED TO THIS DECLARATION:

The property which is, by the recording of this Declaration, subject to the Covenants, restrictions, and easements hereinafter set forth and which, by virtue of The recording of this Declaration, shall be held, transferred, sold, conveyed, used, Occupied, mortgaged or otherwise encumbered by this Declaration is all that tract Or parcel of land described on Exhibit "A" attached hereto and made a part hereof And being 8.6 acres, more or less, 007 Oakwood District of Hall County, Georgia (hereinafter the "Property").

## **ARTICLE THREE**

### **USAGE OF BUILDING SITES**

#### Section 3.01 PERMITTED USES:

All permitted uses shall be performed or carried out within one or more Buildings that are designed and constructed so that the enclosed operations and Uses do not cause or produce a nuisance to other Building Sites such as, but not Limited to, vibration, sound, electromagnetic disturbances, radiation, air water Or other pollution, dust, noxious odors, toxic matter having a potential for Exploding or other hazard. In addition, no use or storage of flammable and/or Explosive material, which increases the insurance rates of adjoining properties, Shall not be permitted. Subject to limitations set forth herein and applicable Zoning ordinances, the following, although not an all-inclusive listing, are Generally permitted uses:

- (a) Use that may involve manufacturing, fabricating, processing or Assembly of products or equipment considered under the City of Oakwood Zoning Ordinances.
- (b) Warehousing and distribution;
- (c) Research and development;
- (d) Data Processing;
- (e) Offices;
- (f) Service industries;
- (g) Laboratories;
- (h) Wholesaling;
- (i) Retail (as approved by Declarant)

Temporary office, storage, sheds, trailers, fences, and the like will be permitted as necessary during the construction period of a permanent building. No temporary facility shall remain for more than thirty (30) days after the date on which the Owner receives an Occupancy permit.

**Section 3.02 PROHIBITED USES:**

The following uses shall be prohibited:

- (a) Animal care facility.
- (b) Automotive, boat and trailer, sales and service (other than servicing of vehicles utilized in a permitted use and incidental to such permitted use).
- (c) Commercial recreation and entertainment community facilities.
- (d) Dwellings.
- (e) Mining.
- (f) Sewage treatment plants (other than private pretreatment or other treatment facilities required by applicable law in connection with an industrial facility).
- (g) Billboards.
- (h) Cell towers.

**ARTICLE FOUR  
ARCHITECTURAL CONTROL**

**Section 4.01 BUILDINGS; MATERIALS AND CONSTRUCTION:**

A) Exterior wall of all buildings placed on lots 1,2,11 & 12 shall be comprised Of architectural panels, architectural brick, brick, stucco, stone or glass in combination with such materials. Simulated brick, stone, or wood used accents are allowed. Metal buildings with brick or masonry façade on the exterior walls, so as to give the appearance of masonry construction shall also be permitted. All buildings located on the subject property shall be finished on the front and two sides with materials as permitted herein. The rear may be concrete block or metal finish provided it is painted to match the building. Lots 3 though 10 shall have a brick or brick and stone combination front and a Minimum of 15 Feet on the sides of the building of the same materials as the front of the Building . The remaining sides of the building shall be a color and texture that shall be Harmonious and compatible with the front.

- B) Colors and textures of exterior building surfaces shall be harmonious and compatible with the colors of other buildings within the Property as approved by Declarant.
- C) Prohibited construction materials shall include, without limitation, exposed concrete block except as provided in Paragraph A above, prefabricated metal buildings except as provided in Paragraph A above, simulated brick, wood, weeping mortar joints, unnatural brick tones and silver finish aluminum doors and windows, except as provided in Paragraph A above.
- D) Mailboxes shall be of uniform size, material, color, and pattern, and shall be approved by the U.S. Postmaster General.
- E) The installation of power, electrical, telephone, and other utility lines must be underground. All transformers and terminal equipment must be screened by landscaping. Service lines that must cross a road right-of-way shall be perpendicular to the right-of-way and shall be constructed by "jack and bore" method.

**Section 4.02 PARKING AND WASTE DISPOSAL:**

- A) The Owner or Owners of a building, which is constructed on a Building Site within the Property, shall provide sufficient and adequate parking spaces and loading facilities to serve the needs of the building in accordance with the applicable regulations of City of Oakwood or any other public authority having jurisdiction over the Property.

- B) There shall be no on-street parking or loading permitted within the Property except as permitted by the applicable regulation of City of Oakwood, Georgia or any other public authority having jurisdiction over the Property
- C) Waste disposal containers, including tumblers, recycling bins and other similar receptacles, shall be located so as not to be visible from the street or shall be concealed by means of a screen wall or fence of material similar and compatible with that of the building so as not to be visible from the street.
- D) All parking lots, driveways, and loading areas shall be constructed of concrete or asphalt, shall be curbed and guttered and shall meet City of Oakwood standards.

Section 4.03 GRADING AND LANDSCAPING:

- A) When the use of chain link fencing is necessary for security reasons, such fencing must be behind trees and/or shrubs so as to provide screening if visible from neighboring properties or public streets or shall be vinyl coated in a color compatible with the existing buildings. No fence shall be extended toward the front or street side property line beyond the front side wall of the building. All fences shall be designed to and be in harmony with the design and construction with the existing buildings.
- B) Every Building Site shall be landscaped within ninety (90) days of occupancy or completion of the building, whichever event shall first occur. All disturbed or graded ground areas of a Building Site shall be grassed or covered with plants or landscaping materials. Landscape treatment of the Building Site shall be in the form of grass lawns and ground covers, shade trees in parking areas, trees along street, plantings in areas used as dividers and in any areas of limited use. Landscaping shall be used to mark entrance points and parking areas. It shall be used to shield or define service areas and property divisions. All landscaping shall be designed for reasonable maintenance and all landscaped areas shall be maintained in a quality manner at all times. Paving or terracing may be used in areas where excessive maintenance would otherwise be required. Grading and drainage for site sediment control and erosion control shall be provided during the construction process to protect the overall quality of Park.
- C) Finished grading shall be such as to prevent ponding or washing of water on the site and on adjacent property. All corrugated metal pipe used for storm drainage shall be bituminous coated. Storm water runoff is to be controlled and must not exceed a rate greater than runoff prior to construction. All runoff shall be regulated by City of Oakwood and all other applicable agencies. Location of topsoil stockpiles, borrow pits on site, and excess material disposal area are subject to the approval of the designated representative of City of Oakwood and Declarant.

Section 4.04 SIGNAGE:

- A) All signs must either be flush mounted on the building façade or mounted on a ground set monument similar in design and material to the building itself, except for small directional signage.
- B) Façade mounted signs shall be made of metal and shall be ground lit. Any Ground set monument signs shall be ground lit and appropriately landscaped.
- C) No portable or temporary signs of any form shall be permitted except for "Building For Sale" or "Building For Lease" signs placed upon any Building Site.
- D) Any exterior lighting installed on any building shall either be indirect or of Such controlled focus and intensity as not to disturb the Owners or Occupants of any adjacent Building Site within the Park.

**SECTION 4.05 CREATION OF ARCHITECTURAL REVIEW COMMITTEE:**

There is hereby created an architectural review committee which shall consist Of at least three persons, but not more than five persons. The right to appoint and Remove all members to the Committee shall be and is hereby vested solely in Declarant, its successors and assigns, until such time as Declarant has Relinquished such right to appoint said members or until the earlier to occur of The events listed in Article seven, Section 7.04. Upon surrender of the right to Appoint said Committee members by the Declarant, the right to appoint said Members shall be vested in the Board.

**SECTION 4.06 DUTIES:**

No Improvement, including landscaping and exterior lighting, shall be Commenced, erected or maintained upon any Building Site, nor shall any Exterior addition to or change or alteration thereon by made, until the plans Showing the nature, kind, shape, height, materials and location of the same Shall have been submitted to and approved in writing by the Committee As to harmony of external design and location in relation to the community Wide standard and as to conformity with the Development Guidelines.

**SECTION 4.07 APPROVAL:**

In order to attempt to obtain such approval of the Committee, the owner Shall submit a site plan, a grading plan, architectural elevations, site details And a landscape plan (including exterior lighting), or whichever of such plans Are applicable, to the Committee. Upon receipt of all such plans required to be Reviewed, the Committee shall have fifteen (15) days within which to review Same. The Committee shall notify the owner in writing of approval or Disapproval and required changes. In the event the Committee fails to approve Or disapprove such design and location within fifteen (15) days after said Submission of plans, approval will not be required and the requirements of this Article shall be deemed to have been satisfied. The Committee shall have the Right to disapprove plans, specifications or details submitted to it if they are not In accordance with the Declaration, if they are incomplete, if the Committee



Deems the plans, specification or details, or any part thereof, to be contrary to the Best interest of the Park and of the owners or if they are not in conformity with The Development Guidelines. In the event any owner's plans are disapproved by The Committee, the owner may resubmit any corrected amended or new plans to The Committee no sooner than ten (10) days after such disapproval. No Temporary structure shall be installed or maintained on any Building Site Without the specific written approval of the Committee. All applications for Approval of any temporary structures will include provisions for its being Dismantled and removed from the Building Site in question.

**SECTION 4.08. VIOLATIONS:**

In the event any owner, or its agents or representatives, commences Construction of any improvement, alteration or construction without the prior Written approval of the Committee as required by this Article, then the Committee through the Association or through the Declarant, shall have the Right to enforce this Article of the Declaration by obtaining a restraining order From the court having proper jurisdiction over this matter. The costs of any Successful enforcement by the Committee shall be levied as an assessment Against the owner of the Building Site upon which such construction was Commenced. The Committee shall have the right to waive the requirements Of this Article, at its sole discretion, as to construction by any owner.

**SECTION 4.09 VARIANCES:**

The Committee shall have the power and authority, in its sole discretion, To grant variances in compliance with the Development Guidelines, Provided, however, that such variances shall be reasonably consistent with the Development Guidelines and this Declaration, shall not materially and adversely Affect existing improvement(s), and provided that the requested deviation, in the Opinion of the Committee, is in the best interest of the Building Site and the Park And the variance requested is compatible with the character of the Building Site And the Park. Whenever, in the exercise of its discretion, the Committee grants a Variance to the Development Guidelines each owner of a Building Site hereby Acknowledges that such variance shall constitute a waiver of any conflicting Provisions of this Declaration and the Development Guidelines. Each owner Of a Building Site appoints the Committee as its true and lawful attorney-in-Fact for the limited purpose of consenting to and granting variances in accordance with the terms of this Section.

**ARTICLE FIVE  
CONDITION OF BUILDING SITES AND FACILITIES LOCATED THEREON**

**Section 5.01 GENERAL CONDITION OF BUILDING SITES:**

The Owner or Occupant of any Building Site shall at all times keep it and the Buildings, improvements and appurtenances thereon in a safe, clean and good Condition and comply, at its own expense, with all applicable governmental,

Health, fire and safety ordinances, regulations, requirements and directives; And the Owner or Occupant shall at regular and frequent intervals remove at its Own expense any rubbish of any character whatsoever which may have Accumulated upon such Building Site. Each Building Site and all improvements Thereon shall at all times be constructed, kept and maintained by the Owner or Occupant of the Building Site in good condition, repair and appearance. All Repairs, alterations, replacements or additions to such improvements shall be at The original work quality and class. The necessity and adequacy of such repairs Shall be measured by the same standard as set forth herein for the original Construction and maintenance. Landscaping shall be maintained in a sightly and Well-kept condition.

**Section 5.02 GROUNDS:**

Once a Building Site is sold by the Declarant, the grounds on that Building Site (whether vacant or occupied) shall be maintained in a neat and sightly Condition. Upon the failure of any Owner and/or Occupant to maintain the Grounds of a Building Site (whether vacant or occupied) in a neat and sightly Condition, the Declarant may (but shall be under no obligation to) after seven Days prior written notice to such Owner and Occupant (if other than the Owner) Enter upon the building site and have the grass, weeds or other vegetation cut or Trimmed when, and as often as, the same is reasonable necessary in its Judgment and may have dead trees, shrubs and/or other plants and trash removed Therefrom and, if appropriate, replaced. The owner of the Building Site shall be Liable to the Declarant for the cost of any such cutting, clearing, maintenance or Removal determined by the Declarant to be necessary and such amount shall also Constitute a charge and lien upon such Building Site enforceable by the Declarant through any appropriate proceeding at law or in equity.

**Section 5.03 IMPROVEMENTS:**

Improvements to the Building Site (whether occupied or vacant) including Without limitation the exterior of buildings, walls, walkways, fences, screens, Driveways, parking areas and/or signs shall be cared for and properly maintained By the Owner or Occupant in a neat and attractive condition. Upon the failure of Any Owner or Occupant to repair and maintain such improvements to a Building Site to the reasonable satisfaction of the Declarant, the Declarant or its authorized Representatives may in its reasonable discretion (but without obligation to do so) After seven days written notice to the Owner and to the Occupant (if other than The Owner) enter upon such Building Site and perform the necessary repair or Maintenance when and as often as the same is necessary in its reasonable Judgment. The Owner of the Building Site shall be personally liable to the Declarant for the cost of such necessary repair and/or maintenance as was Incurred by the Declarant and such amounts shall also constitute a charge and Lien upon such Building Site enforceable by the Declarant by any appropriate Proceeding at law or in equity.

**ARTICLE SIX  
ENFORCEMENT**

**Section 6.01 INSPECTIONS:**

Each Owner and each Occupant hereby irrevocably grants to the Declarant, The right to go upon a Building Site following the giving or reasonable prior Notice for the limited purpose of inspection to determine compliance, or lack Thereof, with these Protective Covenants and Restrictions.

**Section 6.02 REMEDIES FOR VIOLATION:**

Violation of these Covenants shall be corrected by the Owner/Occupant Within a reasonable time generally not to exceed thirty days after written notice Of any such violation by the Declarant or another Owner. Upon the failure of The Owner/Occupant to correct any such violation within said period of time, The Declarant or another Owner may, but shall be under no obligation to correct Any such violation. The Owner of the Building Site shall be liable to the Declarant or another Owner for the reasonable costs incurred by the Declarant Or another Owner in correcting the violation and such amount shall also Constitute a charge and lien upon such Building Site enforceable by the Declarant or another Owner by any appropriate proceeding at law or in equity.

**Section 6.03 ENFORCEMENT:**

Enforcement of the Covenants and Restrictions contained herein may be an Appropriate proceeding at law or in equity (including specific performance) Against any person or persons violating or attempting to violate said Covenants And Restrictions or other provisions of this Declaration either to restrain violation to enforce personal liability or to recover damages or by any appropriate Proceeding at law or in equity to enforce any charge or lien arising by virtue Hereof. The failure of the Declarant or of any Owner to enforce any portion of These Covenants and Restrictions or other provisions of this Declaration shall In no event be deemed to be a waiver of the right to do so or of the right to Enforce any other provision or provisions of these Covenants and Restrictions. The provisions set forth in this article are not intended to in any way diminish the Rights of the Declarant or any Owner or Occupant to enforce the Covenants and Restrictions set forth in this Declaration against any other Owner or Occupant Who is not in conformity therewith. Declarant's rights under these covenants Shall expire at such time as Declarant conveys, transfers or assigns its last Building Site to an unrelated third party.

**ARTICLE SEVEN  
ASSOCIATION**

**Section 7.01 PURPOSES:**

The Association shall exist for the sole purpose of performing certain Functions for the common good and general welfare of the owners and of the Park. The Association shall have no power or duty to do or perform any act or Thing other than those acts and things which will promote the common good and welfare of the owners and of the Park.

**SECTION 7.02 MEMBERSHIP:**

Every person or entity who is an Owner shall be deemed to have a membership in the Association. Membership shall be appurtenant to and may not be separated from such ownership.

**SECTION 7.03 VOTING:**

A) Each owner, with the exception of Declarant for so long as Declarant is a Class B member, shall be a Class A member and shall be entitled to one class A vote per Building Site owned. Where such Owner is a group or entity other than one individual person, the vote on behalf of such Owner shall be exercised only by such individual person as shall be designated in a proxy instrument duly executed by or on behalf of such group or entity and delivered to the Secretary of the Association.

B) The Declarant shall be the sole Class B member and shall be entitled to Three votes for each Building Site owned; provided, however, in no event shall The Class B member have less than the total number of Class A votes plus one. The Class B membership shall cease and be converted to Class A membership at such time as Declarant no longer retains the right to appoint and remove members of the Board pursuant to Section 7.04 of the Article seven below.

C) The Board may suspend the voting rights of any Member and of an Owner or Occupant who shall be delinquent in the payment of any assessment levied by the Association or who shall in violation of the rules and regulations of the Association.

**SECTION 7.04 CONTROL:**

- A) Notwithstanding anything contained herein to the contrary, or in the Articles of Incorporation or in the By-Laws of the Association, Declarant hereby retains the right to appoint and remove any members of the Board and any officer or officers of the Association until the first of the following events shall occur: (i) the expiration of twenty years after the date of the recording of this Declaration; (ii) the date upon which all of the Building Sites have been conveyed by Declarant to Owners other than an entity constituting Declarant; (iii) a surrender by Declarant of the Authority to appoint and remove directors and officers by an express amendment to this Declaration executed and recorded by Declarant.
- B) Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of this section, such rights shall automatically pass to the Members, including Declarant if Declarant then is a Member. At such time, a special meeting of the Association shall be called. At such special meeting the Members shall elect a new Board which shall undertake the responsibilities of the Board and Declarant shall deliver the books, accounts and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period which Declarant has in its possession.

**SECTION 7.05 ANNUAL BUDGET AND FINANCIAL RECORDS**

For each Assessment Year, the Board shall prepare a budget of the Common Area Costs for such Assessment Year to be paid by annual Assessments collected from the Owners and Declarant. The budget shall show, in reasonable detail, the categories of expenses and the anticipated amount of expenses for which annual Assessments are determined by the Board of Declarant, as applicable, to be necessary or desirable, and shall reflect any expected income and estimated sources and amounts thereof of the Association or Declarant, as applicable, for such Assessment Year and any expected surplus from the prior Assessment Year. The Board shall adopt a budget for the upcoming Assessment Year and promptly after such adoption shall cause a copy thereof together with notice of the amount of the annual Assessment payable by each Owner and Declarant during such Assessment Year to be sent by first class mail to each Owner and Declarant. If for any reason an annual budget is not adopted by the Board as required hereby, a payment in the amount required by the last assessment Year shall be due upon each Assessment due date until changed by a new budget adopted by the Board. In any year in which there is an excess of annual Assessments and other income over expenditures, the Board or Declarant, as applicable, shall apply such excess and reduce the subsequent assessment Year's assessments. Copies of the proposed budget and the adopted budget shall be made available by the Association to any Owner or an authorized representative of an Owner requesting a copy thereof upon payment of the reasonable expense of copying. The books and records of the Association may be examined by any Owner or an authorized representative of an Owner during normal business hours.

Notwithstanding the foregoing, if the budget for the upcoming Assessment year includes any expenditure for material capital improvements, new material construction or new material landscaping, the Board shall deliver the proposed budget to each Owner and Declarant by the first class mail promptly after such proposed Budget is prepared. Thereafter, each Owner may provide comments and suggestions about the proposed budget to the Board. Upon approval of a majority vote of the Class A members and of the Declarant (for so long as Declarant is a Class B member), the Board shall adopt the budget which includes such expenditures not less than thirty (30) days before the beginning of such Assessment year and promptly after such adoption shall cause a copy thereof together with notice of the amount of the annual Assessment payable by each Owner and Declarant during such Assessment Year to be sent by first class mail to each Owner and Declarant.

**ARTICLE EIGHT  
MAINTENANCE**

**SECTION 8.01 AREAS OF COMMON RESPONSIBILITY:**

The Association shall maintain and keep in good repair the Areas of Common Responsibility, if any, with such maintenance to be provided by the

assessments hereinafter defined. Such maintenance shall include but not be limited to maintenance, repair and replacement of all landscaping and other flora, structures and improvements situated upon the Areas of Common Responsibility.

**SECTION 8.02 BUILDING SITES:**

All maintenance on any Building Site and all structures, parking areas and other improvements thereon shall be the sole responsibility of the owner thereof who shall maintain said Building Site in good order and condition and consistent with the general appearance of other Building Sites in the Park. The Owner of any Building Site shall at all times keep the landscaping in good order and condition. The Owner and Occupant of any Building Site shall observe all government building codes, health regulations, zoning restrictions and similar laws and regulation. Should the Owner of any Building Site fail to remedy and deficiency in the maintenance of the landscaping and general maintenance of such Building Site after seven (7) days' notice from the Association, the Association hereby expressly reserves the right, privilege and license to make any and all corrections or improvements and landscape maintenance at the expense of the Owner. Such Owner shall be personally liable to the Association for all direct or indirect costs as may be incurred by it in the performance of such maintenance, and the liability for such costs shall be a permanent charge and lien upon such Building Site enforceable by the Association in the same manner as assessments are enforced in this Declaration.

**SECTION 8.03 CREATION OF A LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS:**

The Declarant, for each Building Site, hereby covenants, and each Owner of any Building Site by acceptance of a deed therefore, hereby agrees to pay to the Association:

- (a) Annual assessments or charges;
- (b) Building Site assessments as defined below.

The annual, special and Building Site assessments, together with interest, costs and reasonable attorneys' fees, shall be charged on the Building Sites and shall be a continuing lien upon the Building Sites against which each such assessment is made. Such lien shall be superior to all other liens except (a) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (b) the lien or charge of any first Mortgage of record made in good faith and for value. Such assessments, together with interest, costs and reasonable attorneys fees, shall be the personal obligation of the Owner at the time when the assessment fell due. No sale or transfer shall relieve such Building Site from liability for any assessments thereafter becoming due from the lien thereof, and all dues and assessments due shall be paid in full before any sale or transfer may take place.

**SECTION 8.04 BUILDING SITE ASSESSMENTS:**

The Association may levy Building Site assessments against any one or more Building Sites to be used for (i) the purpose of promoting the common benefit and enjoyment of the Owners of Building Sites against which the specific Building Site assessment is levied and the purpose of maintaining and repairing the Areas of Common Responsibility, or (ii) reconstructing, repairing or replacing improvements or personal property of the Association which have previously been placed in service and become available for use and which are located on any such Building Site or Building Sites or used for the benefit of such Building site(s) or Owner(s), provided, however, that no Building Site assessment pursuant to this subsection (iii) shall be levied against a building Site for such reconstruction, repair or replacement of improvements or personal property if said improvements or personal property is solely located upon and solely benefiting Owner(s) or Building Site(s) other than the building Site or Owner against which the assessment is sought to be levied.

**SECTION 8.05 UNIFORM RATE OF ASSESSMENT:**

Annual and Building Site assessments must be fixed at a uniform rate for all Building Sites and may be collected on a quarterly basis. Said uniform rate of assessment shall be based upon the acreage of a particular Building Site being affected as compared to the total number of acres affected by such improvement, repair or other event giving rise to such assessment (for example: If 3 Building Sites are affected and served by a common drainage facility an one of the Building Sites contains 10 acres, one contains 6 acres and the other contains 4 acres, then any such assessment related to said drainage facility would be split 50% to the 10 acre Building Site, 30% to the 6 acre Building Site and 20% to the 4 acre Building Site).

**SECTION 8.06 DUE DATES OF ASSESSMENTS:**

The annual assessments provided for herein shall commence as to all Building Sites on the last day of the first month after the Association is formed. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual assessment against each Building Site at least 30 days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due date shall be established by the Board. The Association shall, upon demand, and for a reasonable charge, furnish, a certificate signed by an officer of the Association setting forth whether the assessment on a specified Building Site has been paid. A properly executed certificate of the Association as to the status of the assessments on a Building Site is binding upon the Association as of the date of its issuance.

**SECTION 8.07 EFFECT OF NON-PAYMENT OF ASSESSMENTS:  
REMEDIES OF THE ASSOCIATION:**

Any assessment not paid within thirty (30) days after the due date shall bear interest from said due date at a rate equal to 4.0% per annum above the Prime Rate. The "Prime Rate" shall mean the rate of interest announced from time to time in the Federal Reserve Statistical Release H.15 as the Current weekly average of the "Bank Prime Loan" interest rate. In the event that such publication ceases to be issued by the Federal Reserve System, then the "Prime Rate" shall mean the rate of interest announced from time to time as its Prime Rate of interest by any national commercial bank, with offices located in the City of Atlanta, Georgia, selected by the Association. The Association may bring an action at law against the owner personally obligated to pay the same or may foreclose the lien against the Building Site. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of its Building Site or any building on its Building Site. The Association, acting on behalf of the Owners, shall have the power to bid for the Building Site at foreclosure sale to enforce its lien, and to acquire and hold, lease, mortgage and convey the same. During the period owned by the Association following foreclosure, no assessment shall be assessed or levied on such Building Site foreclosed upon. The Association shall also have the right to pursue a money judgment to recover unpaid assessments.

#### **ARTICLE NINE**

##### **DURATION**

###### **Section 9.01 DURATION:**

The Covenants and Restrictions of this Declaration shall run with and bind the subject hereto, shall remain in effect and shall inure to the benefit of and be enforceable by the Declarant or any Owner of a Building Site in the Park or of any other property as is hereafter made subject to this Declaration for a period of 20 years from the date hereof. These covenants may be modified by an agreement in writing by two-thirds (2/3) of the Owners of the Building Site in the Park, but such modification shall be effective only upon recording thereon in the Office of the Clerk of the Superior Court of Hall County, Georgia.

#### **ARTICLE TEN**

##### **INVALIDATION AND APPLICABLE LAW**

###### **SECTION 10.01 EFFECT OF INVALIDATION:**

If any provision of this Declaration is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof provided such severance does not alter a fundamental purpose of the Declaration. To this end the provisions of the Declaration are declared to be severable.

###### **SECTION 10.02 APPLICABLE LAW:**



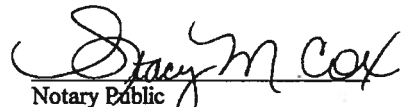
This declaration shall be interpreted, construed and enforced in accordance with laws of the State of Georgia.

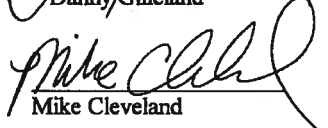
IN WITNESS WHEREOF, the Declarant herein has properly executed and signed this document effective as of the day and year first set forth above.


Signed, sealed and delivered in the Presence of: DMJ AND ASSOCIATES L.L.C.

  
Witness

BY:   
Danny Gililand

  
Notary Public

  
Mike Cleveland

By: Notary Public  
My Commission Expires: August 18, 2008   
Jerry Jackson

(NOTARIAL SEAL)



EXHIBIT "A"

