

Treva W. Shelton  
Clerk Superior Court, Paulding County, Ga.  
Bk 02372 Pg 0135-0169

*SPACE ABOVE THIS LINE FOR RECORDING USE ONLY*

STATE OF GEORGIA

COUNTY OF PAULDING

WHEN RECORDED RETURN TO:  
ANTHONY E. CHEATHAM, P.C.  
PO BOX 991  
ACWORTH GA 30101-0991

**DECLARATION OF  
COVENANTS, RESTRICTIONS AND EASEMENTS  
FOR SILVERCREST LAKES**

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR SILVERCREST LAKES is made this 7th day of March, 2007 by ENCORE OF GEORGIA, INC., a Georgia Corporation (hereinafter referred to as "Declarant").

**WITNESSETH:**

WHEREAS, Declarant is the owner of certain real property in Paulding County, Georgia, which is more particularly described on Exhibit A attached hereto and made part hereof.

WHEREAS, Declarant intends to develop on lands including the real property described above a development to be known as Silvercrest Lakes (hereinafter referred to as the "Development"); and

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

NOW, THEREFORE, Declarant hereby declares that all of the real property described above shall be held, sold and conveyed subject to this Declaration of Covenants, Restrictions and Easements, which is for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development. The Covenants, Restrictions and Easements set forth herein

shall run with the Property (as hereinafter defined), and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, and shall, subject to the limitations herein provided, inure to the benefit of each Owner, his heirs, grantees, distributees, successors and assigns and to the benefit of the Association.

**ARTICLE I**  
**DEFINITIONS**

The following words, when used in this Declaration of Covenants, Restrictions and Easements for Silvercrest Lakes shall have the following meanings:

1.01 Association. "Association" means Silvercrest Lakes Homeowners Association, Inc., a nonprofit corporation organized under the Georgia Nonprofit Corporation Code, its successors and assigns.

1.02. Board of Directors. "Board of Directors" or "Board" shall mean that body responsible for administration of the Association, to be selected as provided in the By-laws and generally serving the same role or function as a Board of Directors under the Georgia Business Corporations Code.

1.03 Builder. "Builder" means a person engaged in the business of constructing single-family homes who purchases a Lot from Declarant for the purpose of constructing a Dwelling thereon for sale.

1.04 By-laws. "By-laws" means the By-laws of the Association.

1.05 Common Property. "Common Property" means all real property (together with any and all improvements now and hereafter located thereon) owned by the Association for the common use and enjoyment of the Owners.

1.06 Declarant. "Declarant" means Encore of Georgia, Inc. or any entity which succeeds to the rights and duties of Declarant as developer of the Property through conveyance by deed to the successor developer of the Property which includes a specific transfer of the rights of Declarant to such a successor.

1.07 Declaration. "Declaration" means this Declaration of Covenants, Restrictions and Easements for Silvercrest Lakes and all amendments thereto filed for record with the Clerk of the Superior Court of Paulding County, Georgia.

1.08 Dwelling. "Dwelling" means an individual detached residential dwelling unit which is constructed on a Lot.

1.09 Lot. "Lot" means any parcel of land shown upon a subdivision plat recorded in the Office of the Clerk of the Superior Court of Paulding County, covering any portion of the Property, provided, however, no portion of the Common Property shall ever be a lot except as provided in

Section 2.04.

1.10 Member. "Member" means any member of the Association.

1.11 Membership. "Membership" means the collective total of all Members of all classes of the Association.

1.12 Owner. "Owner" means the record owner, whether one or more persons or entities, of a fee simple title to any Lot, provided, however, that where fee simple title has been transferred and is being held merely as security for the repayment of a loan, the person or entity who would own the Lot in fee simple if such loan were paid in full shall be considered the Owner.

1.13 Property. "Property" means that certain real property (other than Common Property) described on Exhibit A attached hereto together with such additional real property as Declarant may acquire and subject to the provisions of this Declaration in accordance with the provisions of Article X hereto.

1.14 Pumping Area. "Pumping Area" means the pump house, grinder pump, fencing, together with any necessary supporting or related equipment, installed on Common Property located on the Northeast corner of the Development.

1.15 Restrictions. "Restrictions" means all covenants, restrictions, easements, charges, liens and other obligations created or imposed by this Declaration.

1.16 Structure. "Structure" means:

(a) any thing or object the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration and not limitation, any Dwelling, building or part thereof, garage, porch, shed, greenhouse, or bathhouse, coop or cage, covered or uncovered patio, swimming pool, fence, curbing, paving, wall, tree, shrub, sign, signboard, temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such Lot;

(b) any excavation, grading, fill ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial creek, stream, wash or drainage channel from, upon or across any Lot; and

(c) any change in the grade at any point on a Lot of more than six (6) inches, whether or not subsection (b) of this Section 1.16 applies to such change.

**ARTICLE II**  
**COMMON PROPERTY**

2.01 Conveyance of Common Property.

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

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

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

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

2.02 Right of Enjoyment. Every Owner shall have a right and easement to use and enjoy the Common Property, which right shall be appurtenant to and shall pass with the title to every Lot upon transfer; provided, however, that no Owner shall do any act which interferes with the free use and enjoyment of the Common Property by all other Owners. The Association may permit persons who are not Owners to use and enjoy part or all of the Common Property subject to such limitations, and upon such terms and conditions, as it may from time to time establish. The right and easement of enjoyment granted or permitted by this Section 2.02 is subject to suspension by the Association as provided in Section 2.03)f) and 3.06.

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

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

(b) borrow money for the purpose of carrying out activities of the Association, including the acquisition, construction, improvement, equipping and maintenance of Common Property, and in aid thereof to encumber by deed to secure debt, mortgage or other security interest any or all of the Association's property including Common Property and revenues from assessments, use fees and other sources;

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

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

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

(f) suspend, pursuant to Section 3.06, the voting rights of any Member and the right of enjoyment granted or permitted by Section 2.02;

(g) sell, lease or otherwise convey all or any part of its properties and interests therein; and provided, however, that during the period when Declarant has the right to appoint the members of the Board of the Association and the officers of the Association, the Association shall not sell or convey all or part of its properties and interests therein without approval by Declarant and a two-thirds (2/3) vote of the Members who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the By-laws of the Association; and

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

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

2.05 Delegation of Use. Any Owner may delegate to the members of his immediate family living within his household, or to his tenants who reside on a Lot, in accordance with the By-laws, his right to use and enjoy the Common Property.

2.06 Sales and Construction Offices. Notwithstanding any provisions or restrictions herein to the contrary, Declarant and its duly authorized agents, representatives, and employees shall have the transferable right and easement to erect and maintain sales offices, construction offices, and business offices on the Property, together with such other facilities as in the sole opinion of the Declarant may be reasonably required, convenient, or incidental to the completion, improvement, and sales of Lots and/or Dwellings, for so long as Declarant owns any Lot. Said right and easement of Declarant shall specifically include the right to use the Clubhouse and/or any Dwelling as offices for the sale of Lots and/or Dwellings and for related activities. Notwithstanding any provisions or restrictions herein to the contrary, Declarant and Builders and their duly authorized agents, representatives, and employees shall have the transferable right and easement to erect and maintain signs on the Property for so long as Declarant owns any Lot, provided, however, such signs must be located on Common Areas or on Lots owned by Declarant or Builder.

### **ARTICLE III**

#### **THE ASSOCIATION**

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

3.02 Membership in the Association. Every Owner shall automatically be a member of the Association and such membership shall terminate only as provided in this Declaration.

3.03 Voting Rights. Each Owner, shall be entitled to one (1) vote per Lot. 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 entity and delivered to the secretary of the Association.

3.04 Board of Directors. The affairs of the Association shall be managed by a Board of Directors. The number of Directors and the method of election of Directors shall be as set forth in the By-laws of the Association.

3.05 Rules and Regulations. The Board may establish reasonable rules and regulations concerning the use of the Lots and of the Common Areas and facilities located thereon. Copies of such rules and regulations and amendments thereto shall be furnished by the Association to all Owners prior to the effective date of such rules and regulations and amendments thereto. Such rules and regulations shall be binding upon the Owners, their families, tenants, guests, invitees, servants, and agents, until and unless such rules or regulations be specifically overruled, canceled, or modified by the Board.

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

(a) shall be subject to the Right of Abatement, as defined in Section 8.03, by reason of having failed to take the reasonable steps to remedy a violation or breach of either the Restrictions or the Design Standards of the ACC within thirty (30) days after having received notice of the same pursuant to the provisions of Section 5.11, 6.15 or 8.03 hereof;

(b) shall be delinquent in the payment of any assessment levied by the Association pursuant to the provisions of Article IV hereof; or

(c) shall be in violation of the rules and regulations of the Association relating to the use, operation and maintenance of Common Property. Such suspension shall be for the balance of the period in which said Member or person shall remain in violation, breach or default, as aforesaid, except that in the case of a violation described in subsection (c) of this Section 3.06, the suspension may be for a period not to exceed 60 days after the cure or termination of such violation. No such suspension shall prevent an Owner's ingress to or egress from his Lot.

3.07 Termination of Membership. Membership shall cease only when a person ceases to be an Owner.

3.08 Voting Procedures. The procedures for the election of Directors of the Association and the resolution of such other issues as may be brought before the membership of the Association shall be governed by this Declaration, the Georgia Nonprofit Corporation Code, the Articles of the Incorporation of the Association, and the By-laws of the Association, and as each shall from time to time be amended.

3.09 Easement for the Association. There shall be a general right and easement for the benefit of the Association, its officers, directors, agents and employees, including, but not limited to, any manager employed by the Association, to enter upon any Lot or any portion thereof in the performance of their respective duties. Except in the event of emergencies, this general right and easement shall be exercised only during normal business hours and then, whenever practicable, only upon advance notice to the Owner or occupant of the Lot directly affected thereby.

3.10 Liability of Officers and Directors. The officers and directors of the Association shall not be liable for any mistake of judgment, whether negligent or otherwise, except for their own individual willful misfeasance or malfeasance, misconduct or bad faith. The officers and directors of the Association shall have no personal liability with respect to any contract or other agreement made by them in good faith on behalf of the Association (except to the extent that such officers or directors may also be members of the Association).

3.11 Control by Declarant. Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the By-laws of the Association, Declarant hereby retains the right to appoint and remove any and all members of the Board of the Association and any officer or officers of the Association until such time as the first of the following events shall occur:

(a) the expiration of twelve (12) years after the date of the recording of this Declaration;

(b) the date upon which all of the Lots have been conveyed by Declarant to Owners other than a person or persons constituting Declarant; or (iii) the 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. 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 right shall automatically pass to the Owners, including Declarant if Declarant then owns one or more Lots; and a special meeting of the Association shall be called at such time. At such special meeting the Owners shall elect a new Board of Directors which shall undertake the responsibilities of the Board, and Declarant shall deliver the books, accounts and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period which Declarant has in its possession. Each Owner of a deed to or other conveyance of a Lot vests in Declarant such authority to appoint and remove directors and officers of the Association as provided in this Section. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law and any other right or privilege reasonably necessary to effectuate any such right or privilege.

#### ARTICLE IV ASSESSMENTS

4.01 Covenant for Assessments and Creation of Lien and Personal Obligation. Declarant, to the extent that Declarant is an Owner, hereby covenants and agrees, and each Owner, jointly and severally, for themselves, their heirs, distributees, legal representatives, successors and assigns, by acceptance of a deed for a Lot, whether or not the covenants contained herein shall be expressed in any such deed, hereby covenants and agrees as follows:

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



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

(c) that there is hereby created a continuing charge and lien upon all Lots owned by them against which all such assessments are made to secure payment of such assessments and interest thereon as provided in Section 4.09 hereof and costs of collection including reasonable attorney's fees;

(d) that such continuing charge and lien on such Lots binds such Lots in the hands of the then Owner, and the Owner's heirs, devisees, legal representatives, successors and assigns. Such charge and lien is superior to any and all charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon such Lots whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, except (i) such liens for taxes or other public charges as are by applicable law made superior, and (ii) all deeds to secure debt given to secure a loan the proceeds of which are used (1) to purchase a Lot or Lots (together with any and all Structures which may from time to time be placed or located thereon) and (2) to finance the construction, repair or alteration of Structures;

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

(f) that all annual and special assessments (together with interest thereon as provided in Section 4.09 of this Declaration and costs of collection including reasonable attorneys' fees) levied against any Lot or Lots owned by them during the period that they are an Owner shall be (in addition to being a continuing charge and lien against such Lot or Lots as provided in Section 4.01(c) of this Declaration) a personal obligation which will survive any sale or transfer of the Lot or Lots owned by them, provided however, that such personal obligation for delinquent assessments shall not pass to an Owner's successor in title unless expressly assumed by such successor and

(g) to pay to the Association a one time initiation fee of \$ 800.00 which shall be due and payable by the Owner on the date that the Owner closes on the purchase of a Lot with a Dwelling constructed thereon.

**4.02 Purpose of Assessment.** The assessments levied by the Association shall be used exclusively for the purpose of providing for the common good and general welfare of the people living in the Development, including, but not limited to, security, and acquisition, construction, improvements, maintenance and equipping of Common Property, and enforcement of the Restrictions contained in this Declaration, the enforcement of the Design Standards (as hereinafter defined) of the ACC (as hereinafter defined), the payment of operating costs and expenses of the Association, and the payment of all principal and interest when due on all debts owed by the Association:

4.03 Accumulation of Funds Permitted. The Association shall not be obligated to spend in any calendar year all the sums collected in such year by way of annual assessments or otherwise, and may carry forward, as surplus, any balances remaining; nor shall the Association be obligated to apply such surplus to the reduction of the amount of the Annual Assessments in any succeeding year, but may carry forward from year to year such surplus as the Board may deem to be desirable for the greater financial security of the Association and the effectuation of its purposes.

4.04 Maximum Annual Assessments.

(a) Beginning on the Commencement Date (as hereinafter defined) and continuing thereafter until January 1 of the year immediately following the Commencement Date each Lot shall be subject to a maximum annual assessment of Seven Hundred Dollars (\$700.00) per Lot. In the event that the Commencement Date falls on a day other than January 1, the annual assessment for such year shall be prorated so that each Owner pays an annual assessment proportional to the number of days remaining in the calendar year. The words "Assessment Year" as used herein shall mean the calendar year with the first Assessment Year commencing on January 1 of the year immediately following the Commencement Date.

(b) Commencing with the first Assessment Year and continuing thereafter, the maximum annual assessment may be increased at any time and from time to time during each Assessment Year not more than five per cent (5%) above the maximum annual assessment for the previous Assessment Year, without a vote of the Membership. During the first Assessment Year, the maximum annual assessment may be increased ten percent (10%) above \$700.00.

(c) Commencing with the first Assessment Year and continuing thereafter, the maximum annual assessment for each Assessment Year may at any time and from time to time be increased more than five percent (5%) above the maximum annual assessment for the previous Assessment Year if such increase is approved by two-thirds (2/3) vote of the Members of the Association who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the provisions of the By-laws of the Association and this Declaration. During the First Assessment Year, the maximum annual assessment may be increased more than ten percent (10%) above \$700.00 if such increase is approved by a two-thirds (2/3) vote of the Members of the Association who are present or by proxy and voting at a meeting of Members duly held in accordance with the provisions of the By-laws of the Association and this Declaration.

4.05 Special Assessments for Capital Improvements. In addition to the annual assessments authorized by this Article IV, the Association may levy, in any Assessment Year and with such frequency as the Association shall deem necessary, special assessments for the purpose of paying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement on the Common Property, provided that any such special assessments shall have been approved by a two-thirds (2/3) vote of the Members of the Association who are present in person or by proxy at a meeting of Members duly held in accordance with the provisions of the By-laws of the Association and this Declaration.

4.06 Assessment Procedure.

(a) The Board shall establish the annual assessment for each Assessment Year at an amount not in excess of the maximum annual assessment as determined by the provisions of this Article IV, and shall also establish the date during the Assessment Year on which the annual assessment shall be due and payable (such date is hereinafter referred to as the "Due Date").

(b) All Members of the Association shall be given written notice by the Board not less than thirty (30) nor more than sixty (60) days in advance of any meeting of the Members of the Association at which the Board shall propose taking action pursuant to Section 4.04(c) and Section 4.05 of this Article IV. Such written notice shall specify under which Section or Sections the Board will propose action. At such meeting, the presence of Members or of proxies entitled to cast sixty percent (60%) of the total votes outstanding shall constitute a quorum. If the required quorum is not present at such meeting, a second meeting may be called by the Board, and the required quorum at such second meeting shall be thirty percent (30%) of the total votes outstanding. No such second meeting shall be held more than sixty (60) days following the first meeting.

4.07 Uniform Rate of Assessment. The annual assessment and special assessments must be fixed at a uniform rate for all Lots.

4.08 Commencement Date for Assessments. Each Lot shall become subject to Annual Assessments as provided for in this Article IV on the date that Owner closes on the purchase of a Lot with a Dwelling constructed thereon. A Builder shall have no obligation to pay any Annual Assessment.

4.09 Effect of Nonpayment of Assessments. Any Assessment which is not paid on or before the Due Date shall incur a late fee of \$25.00 if not paid within thirty (30) days of the Due Date and shall bear interest after the Due Date at the lower of (i) the highest legal rate of interest which can be charged on the lending of money or, (ii) the rate of eighteen percent (18%) per annum or at such rate as the Board may from time to time establish, provided, however, that in no event shall the Board have the power to establish a rate of interest in violation of the laws of the State of Georgia. In the event of default in the payment of any one or more installments of an assessment, the Board may declare any remaining balance of the assessment at once due and payable. In the event that an Owner shall fail to pay fully any portion of any assessment prior to the date on which payment is due, such unpaid portion (including any remaining balance declared immediately due and payable in accordance with the preceding sentence), together with interest any costs of collection including reasonable attorneys' fees, shall be a binding personal obligation of such Owner, as well as a lien on such Owner's Lot enforceable in accordance with the provisions of this Declaration.

4.10 Certificate of Payment. Upon written demand by an Owner, the Association shall within a reasonable period of time issue and furnish to such Owner a written certificate stating that all assessments (including penalties, interest and costs, if any) have been paid with respect to any

Lot owned by said Owner as of the date of such certificate, or that all assessments, interest and costs have not been paid and setting forth the amount then due and payable. The Association may make a reasonable charge for the issuance of such certificate. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser of, or lender on, the Lot in question.

4.11 Approval by Declarant. Notwithstanding anything to the contrary contained herein, no assessment shall be made without the approval of Declarant for so long as Declarant has the right to appoint officers and directors of the Association.

**ARTICLE V**  
**ARCHITECTURAL CONTROL**

5.01 Architectural Control Committee: Creation and Composition.

(a) An Architectural Control Committee (the "ACC") shall be established consisting of not less than three (3) nor more than five (5) individuals, provided, however, the ACC shall have an uneven number of members. Notwithstanding anything to the contrary contained herein, all members of the ACC shall be appointed by Declarant until the first to occur of (i) until every Lot is conveyed by Declarant to a party or parties who are not classified hereunder as successor or assign of Declarant; or (ii) until voluntary surrender in writing by Declarant of its right to appoint the membership of the ACC. All costs of operating the ACC shall be borne by the Association.

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

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

approve or disapprove plans and specifications for any installation, construction or alteration of any Structure on any Lot.

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

5.04 Operations of the ACC.

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

(b) Activities.

(1) The ACC shall adopt and promulgate the Design Standards described in Section 5.05 hereof and shall, as required, make findings, determinations, rulings, and orders with respect to the conformity with said Design Standards of plans and specifications to be

submitted for approval to the ACC pursuant to the provisions of this Declaration. The ACC shall, as required, issue permits, authorizations, or approvals, which may include specified requirements or conditions, pursuant to the provisions of this Declaration. The function of the ACC shall be to deal with aesthetic issues and not to act as a building inspector.

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

#### 5.05 Design Standards.

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

(1) governing the form and content of plans and specifications to be submitted to the ACC for approval pursuant to the provisions of this Declaration;

(2) governing the procedure for such submission of plans and specifications;

(3) establishing general guidelines with respect to the approval and disapproval of design features, architectural styles, exterior color and materials, details of construction, location and size of Structures and any other matters that require approval by the ACC pursuant to this Declaration; and

(4) assuring the conformity and harmony of external design and general quality of the Development.

(b) The ACC shall make a published copy of its current Design Standards readily available to the Members and prospective Members of the Association and to all applicants seeking the ACC's approval.

5.06 Submission of Plans and Specifications. No structure shall be commenced, erected, placed, moved onto or permitted to remain on any Lot nor shall any existing Structure upon any Lot be altered in any way which materially changes the exterior appearances of the Structure or Lot, unless plans and specifications therefore shall have been submitted to and approved in writing by the ACC. Such plans and specifications shall be in such form and contain such information as may be reasonably required by the ACC in the Design Standards, including, without being limited to:

(a) a site plan showing the location of all proposed and existing Structures on the Lot including building setbacks, open space, driveways, walkways and parking spaces including the number thereof and all siltation and erosion control measures;

(b) a floor plan;

(c) exterior elevations of all proposed Structures and alterations to existing Structures, as such Structures will appear after all back-filling and landscaping are completed;

(d) specifications of materials' color scheme and other details affecting the exterior appearance of all proposed Structures and alterations to existing Structures; and

(e) plans for landscaping.

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

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

(a) the failure to include information in such plans and specifications as may have been reasonably requested;

(b) the failure of such plans or specifications to comply with this Declaration or the Design Standards; or

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

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

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

5.11 Violations. If any Structure shall be erected, placed, maintained or altered upon any Lot, otherwise than in accordance with the plans and specifications approved by the ACC pursuant to the provisions of this Article, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If in the opinion of the ACC such violation shall have occurred, the ACC shall notify the Association. If the Board shall agree with the determination of the ACC with respect to the violation, then the Board shall provide written notice to the Owner by certified mail, setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation. If the Owner shall not have taken reasonable steps toward the required remedial action within thirty (30) days after the mailing of the aforesaid notice of violation, then the Association shall have the Right of Abatement as provided in Section 8.03 hereof.

5.12 Certification of Compliance.

(a) Upon completion of the installation, construction, or alteration of any Structure in accordance with plans and specifications approved by the ACC, the ACC shall, upon written request of the Owner thereof or upon the ACC's own initiative, issue a Certificate of



Compliance, identifying such Structure and the Lot upon which such Structure is placed, and stating that the plans and specifications have been approved and that such Structure complies with such plans and specifications. A copy of said Certificate shall be filed for permanent record with the plans and specifications on file with the ACC.

(b) Any Certificate of Compliance issued in accordance with the provisions of this Section shall be prima facie evidence of the facts therein stated; and as to any purchaser or encumbrancer in good faith and for value, or as to any title insurer, such Certificate shall be conclusive evidence that all Structures on the Lot comply with all the requirements of this Article, provided, however, that the Certificate shall in no way be construed to certify the acceptability, sufficiency or approval by the ACC of the actual construction of Structures or of the workmanship, or to represent or warrant to any person the quality, function, or operation of the Structures or of any construction, workmanship, engineering, materials or equipment.

(c) The issuance of the Certificate shall in no way be construed to certify to any party that the Structures have been built in accordance with any applicable rule or regulation.

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

## **ARTICLE VI**

### **GENERAL COVENANTS AND RESTRICTIONS**

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

6.02 Restriction on Use. Lots may be used for single-family residences only and for no other purposes provided that Declarant may operate a Sales Office and/or Model Homes on a Lot or Lots designated by Declarant.

6.03 Resubdivision of Property. No Lot may be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise, without the prior written approval of the ACC of plans and specifications for such split division or subdivision.

6.04 Erosion Control. No activity which may create erosion or siltation problems shall be undertaken on any Lot without the prior written approval of the ACC of plans and specifications for the prevention and control of such erosion or siltation. The ACC may, as a condition of approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include (by way of example and not of limitation) physical devices for controlling the run-off and drainage of water, special precautions in grading and otherwise changing the natural landscapes and required landscaping as provided

for in Section 6.05. Guidelines for the prevention and control of erosion and siltation may be included in the Design Standards of the ACC.

6.05 Landscaping. No construction or alteration of any Structure shall take place without the prior written approval by the ACC of plans and specifications for the landscaping to accompany such construction or alteration. Guidelines for the landscaping to accompany the construction or alteration of any Structure shall be included in the Design Standards of the ACC.

6.06 Trees. No tree having a diameter of six (6) inches or more [measured from a point two (2) feet above ground level] shall be removed from any Lot unless such removal is in conformity with approved landscaping plans and specifications submitted pursuant to the provisions of Section 6.05 hereof. Guidelines relating to the preservation of trees and other natural resources and wildlife upon the Property shall be included in the Design Standards of the ACC.

6.07 Temporary Buildings. No temporary building, trailer, garage or building under construction shall be used, temporarily or permanently, as a residence on any Lot except as temporary sleeping or living quarters required or desirable for security purposes by the ACC.

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

(1) such signs as may be required by legal proceedings;

(2) not more than one "For Sale" or "For Rent" sign, such sign having a maximum face area of four square feet; provided, however, that if, at the time of any desired use of such sign, the Association is making "For Sale" or "For Rent" signs available for the use of Owners, the signs made available by the Association must be used; or

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

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

6.08 Setbacks. In approving plans and specifications for any proposed Structure, the ACC may establish setback requirements for the location of such Structure. Guidelines for setbacks may be included in the Design Standards of the ACC and shall be consistent with any such setbacks shown on recorded plats of any portion or all of the Property. No Structure shall be erected or placed on any Lot unless its location is consistent with such setbacks.

6.09 Fences. No fence or wall of any kind shall be erected, maintained, or altered on any Lot without the prior written approval of the ACC of plans and specifications for such fences or walls. Guidelines relating to the design, location and uses of fences and walls may be included in the Design Standards of the ACC.

6.10 Roads and Driveways. No road or driveway shall be constructed or altered on any Lot without the prior written approval of the ACC of plans and specifications for such roads and driveways. Guidelines relating to the design and location of roads and driveways may be included in the Design Standards of the ACC.

6.11 Antennae. No exterior television or radio antennae including satellite television signal receiving equipment of any sort shall be placed, allowed or maintained upon any portion of a Structure or Lot without prior written approval by the ACC. No antennae shall be installed or used for the purpose of transmitting electronic signals.

6.12 Swimming Pools. No swimming pool shall be constructed on any Lot without the prior written approval of the ACC of plans and specifications for such swimming pools. Guidelines relating to the design and location of swimming pools may be included in the Design Standards of the ACC. No above ground swimming pools shall be placed on any Lot.

6.13 Clotheslines, Garbage Cans, Etc. All equipment, garbage cans, woodpiles, etc. shall be kept screened by adequate planting or fencing so as to conceal them from view by neighboring residences and streets. No clotheslines shall be placed on any Lot.

6.14 Maintenance. Each Owner shall keep and maintain each Lot and Structure owned by him, as well as all landscaping located thereon, in good condition and repair, including, but not limited to (i) the repairing and painting (or other appropriate external care) of all Structures; (ii) the seeding, watering and mowing of all lawns; (iii) the mulching of all planting areas with approved mulch listed in the Design Standards; and (iv) the pruning and trimming of all trees, hedges and shrubbery so that the same are not obstructive of a view by motorists or pedestrians of street traffic. If in the opinion of the ACC, any Owner shall fail to perform the duties imposed by this Section, the ACC shall notify the Association. If the Board shall agree with the determination of the ACC with respect to the failure of said Owner to perform the duties imposed by this Section, then the Board shall give written notice to the Owner to remedy the condition in question, setting forth in reasonable detail the nature of the condition and the specific action or actions needed to be taken to remedy such condition. If the Owner shall fail to take reasonable steps to remedy the condition within thirty (30) days after the mailing of said written notice by certified mail, then the Association shall have the Right of Abatement as provided in Section 8.03 hereof. Guidelines relating to the maintenance of Structures and landscaping may be included in the Design Standards of the ACC.

6.15 Recreational Vehicles and Trailers and Commercial Vehicles. No house trailer, mobile home, motor home, recreational vehicle, camper, truck with camper top, boat or boat trailer or like equipment shall be permitted on any Lot on a permanent basis, but shall be allowed on a temporary basis not to exceed (a) seven (7) consecutive days, or (b) twenty-five (25) total days in

any calendar year. Owners may park sport utility vehicles, two-axle pickup trucks, and domestic vans on the driveway of a Lot so long as none of said vehicles display any advertising or identify any business. No other trucks, vans or commercial vehicles may be parked anywhere on a Lot or in the street in front of any Dwelling. The only place an authorized vehicle may be parked on a Lot is on a driveway or concrete parking area on the Lot.

6.16 Recreational Equipment. Recreational and playground equipment shall be placed or installed only upon the rear of a Lot, except that basketball goals, backboards and poles may be placed or installed other than upon the rear of a Lot provided they are painted and maintained in accordance with the Design Standards. All recreational and playground equipment shall be kept screened by adequate planting or fencing so as to conceal them from view by neighboring residences and streets.

6.17 Animals and Pets. No animals, livestock, or poultry of any kind shall be raised, bred, kept or permitted on any Lot, with the exception of dogs, cats or other usual and common household pets in reasonable number, provided that such pets are not kept, bred or maintained for any commercial purpose, are not permitted to roam free, and in the sole discretion of the ACC, do not endanger the health, make objectionable noise or constitute a nuisance or inconvenience to the Owners of other Lots or the owner of any property located adjacent to the Development. All structures for the care, housing, or confinement of any pets shall be kept screened by adequate planting or fencing so as to conceal them from view by neighboring residences and streets.

6.18 Solid Wastes.

(a) No person shall dump rubbish, garbage, or any other form of solid waste on any Lot or on Common Property.

(b) Except during approved construction, no person shall burn rubbish, garbage or any other form of solid waste on any Lot or on Common Property.

(c) Except for building materials employed during the course of construction of any Structure approved by the ACC, no lumber, metals, bulk materials or solid waste of any kind shall be kept, stored, or allowed to accumulate on any Lot unless screened or otherwise handled in a manner set forth in the Design Standards.

(d) If rubbish, garbage, or any other form of solid waste is to be disposed of by being collected on a regular basis and recurring basis, containers may be placed in the open on any day that pickup is to be made. At all other times such containers shall be screened or enclosed in a manner set forth in the Design Standards. Guidelines relating to the type of containers permitted, the manner of storage and the place of pickup may also be included in the Design Standards.

(e) Each Owner, or their authorized agent, shall contract with Georgia Waste, or such other trash pickup service as the ACC may from time to time designate, for the pickup and removal of household waste from their Lot on a weekly basis. No private waste service, other

than that designated by the ACC, shall be utilized by any Owner.

6.19 Nuisances. No noxious or offensive activity shall be carried on upon any Lot so as to render any portion unsanitary, unsightly, offensive, or detrimental to persons using or occupying any other portions of the Development. Noxious or offensive activities shall not be carried on in any Lot or in any part of the Common Areas, and each Owner, his family, tenants, visitors, guests, servants, and agents, shall refrain from any act or use of a Lot or of the Common Areas which could cause disorderly, unsightly, or unkempt conditions, or which could cause embarrassment, discomfort, annoyance, or nuisance to the occupants of other Lots, or which could result in a cancellation of any insurance of any Lot or any portion of the Common Areas, or which would be in violation of any law or governmental code or regulation. Without limiting the generality of the foregoing provisions, no exterior speakers, horns, whistles, bells, or other sound devices, except security devices used exclusively for security purposes, shall be located, used, or placed within the Development.

6.20 Notice of Tenants, Lessees and Guests. All tenants, lessees and guests are subject to the Covenants contained in this Declaration and must abide by the rules and regulations set forth herein. Any failure of a lessee to fully comply with the terms and conditions of such documents shall constitute a default by the Owner. Leasing by an Owner shall not relieve an Owner from his obligations hereunder. In the event of a violation of this Declaration by tenants, lessees, or guests, the Association shall notify the Owner as well as the tenant of such violation.

6.21 Sewage Disposal. No Lot shall employ any septic tank, drain field or other sewage disposal system or process, except such pump equipment as may be required for basement or other below-grade sewer installation. Each Owner shall connect Owner's Dwelling into the gravity flow sewer system serving the Property.

#### **ARTICLE VII**

#### **EASEMENTS, ZONING AND OTHER RESTRICTIONS**

##### **7.01 Easements**

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

(1) the erection, installation, construction and maintenance of wires, lines, conduits, and poles and the necessary or proper attachments in connection with the transmission of electricity, telephone, cable television cables and other utilities and similar facilities;

(2) the erection, installation, construction and maintenance of stormwater drains, land drains, public and private sewers, irrigation systems, pipelines for supplying gas, water and

heat, and for any other public or quasi-public facility, service or function;

(3) slope control purposes, including the right to grade and plant slopes and prevent the doing of any activity which might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow;

(4) the planting or replanting of hedges, shrubbery, bushes, trees, flowers and plants of any nature; and

(5) lake access and recreational use for portions of the Property abutting lakes which easement may be for the benefit of Declarant and Owners.

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

7.02 Easement Area. The words "Easement Area" as used herein shall mean those areas on any Lot, Property or Common Property with respect to which easements are shown on a recorded deed or on any filed or recorded map or plat relating thereto, and specifically created hereby. Declarant hereby specifically reserves for itself, its successors and assigns, an easement over and across all roads and right of ways shown on any plat of the Property filed of record for the purpose of installation, construction, alteration, and maintenance of sewer lines, pipes and equipment serving the Property.

7.03 Entry. Declarant hereby reserves for itself and its employees, agents, successors, and assigns, an easement over and across each Easement Area, together with the right at all reasonable times to enter upon all parts of each Easement Area for any of the purposes for which such Easement Area is reserved, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and the carrying out of such purposes, provided the same are done in accordance with the provisions of this Section. Declarant and its employees, agents, successors and assigns shall be responsible for leaving such Lot, Property or Common Property in good condition and repair following any work or activity undertaken in an Easement Area pursuant to the provisions of Section 7.01.

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

**ARTICLE VIII**  
**ENFORCEMENT**

8.01 Compliance. Each Owner shall comply strictly with the By-laws of the Association and with the published rules and regulations of the Association adopted pursuant to this Declaration as either of the same may be amended from time to time, and with the covenants, restrictions, and easements set forth in this Declaration.

8.02 Right of Enforcement. This Declaration and the Restrictions contained herein shall inure to the benefit of and shall be enforceable by:

- (a) Declarant so long as it is an Owner,
- (b) each Owner, his legal representatives, heirs, successors and assigns, and
- (c) the holder of any deed to secure debt upon any Lot.

8.03 Right of Abatement.

(a) Except where different notices of provisions are provided in Sections 5.11 and 6.15, in the event of a violation or breach of any Restriction contained in this Declaration, the Association shall give written notice by certified mail to the Owner setting forth in reasonable detail the nature of such violation or breach and the specific action or actions needed to be taken to remedy such violations or breach. If the owner shall fail to take reasonable steps to remedy such violation or breach within thirty (30) days after the mailing of said written notice, then the Association shall have the Right of Abatement subject only to the superior right of holders of deeds to secure debt described in paragraph 4.01(d)(ii).

(b) The Right of Abatement, as used in this Section and in Sections 5.11 and 6.15 hereof, means the right of the Association, through its agents and employees, to enter at all reasonable times upon any Lot or Structure, as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove or repair such violation, breach or other condition which may exist thereon contrary to the provisions hereof, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and such actions, provided such entry and such actions are carried out in accordance with the provisions of this Section, and with the cost thereof including the costs of collection and reasonable attorneys' fees, together with the interest thereon at the lower of the highest rate permitted by law or 18 percent to be a binding personal obligation of such Owner enforceable in law, as well as a lien on such Owner's Lot enforceable pursuant to the provisions of Section 8.05 hereof. Such lien shall be superior to any and all charges, liens or encumbrances which may in any manner arise or be imposed upon the Lot after such entry whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, excepting only:

(1) such liens for taxes or other public charges as by applicable law are made superior,

(2) the liens created by Section 4.01 hereof, and

(3) all deeds to secure debt given to secure a loan the proceeds of which are used (i) to purchase a Lot or Lots (together with any and all Structures which may from time to time be placed or located thereon) and (ii) to finance construction, repair or alteration of Structures.

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

8.05 Collection of Assessments and Enforcement of Lien.

(a) If any assessment, interest, cost or other charge is not paid as required by this Declaration, the Association may bring either an action at law against the Owner personally obligated to pay the same, or an action to foreclose any lien created by his Declaration against the Lot or Lots subject to the lien, or both, for the purpose of collecting such assessment, cost or charge, plus any interest thereon and costs of collection, including reasonable attorneys' fees.

(b) As an additional remedy, but in no way as a limitation on the remedies, if any assessment, interest, cost or other charge is not paid as required by this Declaration, each Owner hereby grants to the Association and its assigns the following irrevocable power of attorney: To sell the said Lot or Lots subject to the lien at auction, at the usual place for conducting sales at the Courthouse in Paulding County, Georgia, to the highest bidder for cash, after advertising the time, terms and places of such sale once a week for four weeks immediately preceding such sale (but without regard to the number of days) in the paper in which the Sheriff's advertisement for Paulding County, Georgia are published, all other notice being hereby waived by each Owner, and the Association or any person on behalf of the Association, or assigns, may bid and purchase at such sale and thereupon execute and deliver to the purchaser or purchasers at such sale as conveyance of said property in fee simple, which conveyance shall contain recitals as to the happenings of the default upon which the execution of the power of sale herein granted depends, and each Owner hereby constitutes and appoints the Association and assigns, the agent and attorney-in-fact of each Owner to make such recitals, and hereby covenants and agrees that the recitals so to be made by the Association, or assigns, shall be binding and conclusive upon the Owner whose property is the subject matter of such sale, and the Owner whose property is the subject matter of such sale, and the heirs, executors, administrators, and assigns of such Owner, and that the conveyance to be made by the Association or assigns shall be effectual to bar all equity or redemption of such Owner, or the successors in interest of such Owner, in and to said



Lot or Lots, and the Association or assigns shall collect the proceeds of such sale, and after retaining therefrom the entire amount due for expenses of sale and fifteen per cent (15%) of the aggregate amount due for attorneys' fees, shall pay any excess to such Owner, or to the heirs or assigns of such Owner as provided by law. The power an agency hereby granted are coupled with an interest and are irrevocable by death or otherwise and are granted as cumulative to the remedies for collection of said indebtedness provided by law.

(c) WAIVER. EACH OWNER, BY ACCEPTANCE OF A DEED CONVEYING A LOT SUBJECT TO THIS DECLARATION, WAIVES ANY RIGHT WHICH OWNER MAY HAVE UNDER THE CONSTITUTION OR THE LAWS OF THE STATE OF GEORGIA OR THE CONSTITUTION OR THE LAWS OF THE UNITED STATES OF AMERICA TO NOTICE OR TO A JUDICIAL HEARING PRIOR TO THE EXERCISE OF ANY RIGHT OR REMEDY PROVIDED BY THIS DECLARATION AND OWNER WAIVES OWNER'S RIGHTS, IF ANY, TO SET ASIDE OR INVALIDATE ANY SALE DULY CONSUMMATED IN ACCORDANCE WITH THE PROVISIONS OF THIS DECLARATION ON THE GROUND (IF SUCH BE THE CASE) THAT THE SALE WAS CONSUMMATED WITHOUT A PRIOR JUDICIAL HEARING.

ALL WAIVERS BY OWNER IN THIS PARAGRAPH HAVE BEEN MADE VOLUNTARILY, INTELLIGENTLY AND KNOWINGLY, AFTER OWNER HAS FIRST BEEN ALLOWED THE OPPORTUNITY TO CONSULT LEGAL COUNSEL WITH RESPECT TO OWNER'S POSSIBLE RIGHTS.

8.06 No Waiver. The failure of the Declarant, the Association, or the Owner of any Lot, his or its respective legal representatives, heirs, successors, and assigns, to enforce any Restrictions herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to any violation or breach occurring prior or subsequent thereto.

8.07 Fines.

(a) Upon the violation of this Declaration, the By-laws or any rules and regulations duly adopted hereunder, the Association shall have the power to impose reasonable monetary fines, including fines for each day a violation continues, which shall constitute an equitable charge and a continuing lien upon the Lot, the Owner or Occupants of which are guilty of such violation, and which may be collected as provided in Section 8.05 of this Declaration.

(b) The Association shall not impose a fine for violation of this Declaration, the By-laws or any rules and regulations duly adopted hereunder until the following procedure is followed: Written demand to cease and desist from an alleged violation shall be served upon the Owner responsible for such violation, specifying: (i) the alleged violation; (ii) the action required to abate the violation; (iii) the fine that will be imposed if the violation is not abated; and (iv) a time period of not less than ten (10) days during which the violation may be abated without a fine. If the violation is a continuing one, or if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the By-laws or the rules and regulations of the Association may result in the imposition of the fine specified in the statement.

**ARTICLE IX**

**DISPUTE RESOLUTION AND LIMITATION ON LITIGATION**

9.01 Agreement to Avoid Litigation. The Declarant, the Association, its officers, directors, and committee members, all persons subject to this Declaration, any Builder, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Property, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that those claims, grievances or disputes described in Sections 9.02 ("Claims") shall be resolved using the procedures set forth in Section 9.03 in lieu of filing suit in any court.

9.02 Claims. Unless specifically exempted below, all claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of the Declaration or the Bylaws, or the rights, obligations and duties of any Bound Party under the Declaration or the Bylaws or relating to the design or construction of improvements on the Property shall be subject to the provisions of Section 9.03.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 9.03

(a) any suit by the Association against any Bound Party to enforce the provisions of Article IV (Assessments);

(b) any suit by the Association to obtain a temporary restraining order, or other mandatory or prohibitive equitable relief, and such other ancillary relief as permitted to enforce the provisions of Article V (Architectural Control) or Article VI (General Covenants and Restrictions);

(c) any suit by an Owner to challenge the actions of the Declarant, the Association, the ACC, or any other committee with respect to the approval or disapproval, of plans and specifications in accordance with Article V (Architectural Control);

(d) any suit by an Owner to challenge the enforcement or application of specific use restrictions promulgated in accordance with the procedures set forth in Article VI (General Covenants and Restrictions);

(e) any suit between Owners, which does not include Declarant or the Association as a Party, if such suit asserts a Claim which would constitute a cause of action independent of the Declaration or the Bylaws;

(f) any suit in which any indispensable party is not a Bound Party; and

(g) any suit which otherwise would be barred by any applicable statute of limitations.

With the consent of the parties thereto, any of the above may be submitted to the alternate resolution procedures set forth in Section 9.03.

9.03. Mandatory Procedures.

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (collectively, the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

(1) the nature of the Claim, including the Persons involved and Respondent's role in the Claim;

(2) the legal basis of the Claim (i.e., the specific authority out of which the claim arises);

(3) Claimant's proposed remedy; and

(4) that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation and Mediation.

(1) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If a written request is submitted to the Board by a Party and is accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation.

(2) If the Parties do not resolve the Claim within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 additional days to submit the Claim to mediation under the auspices of an independent dispute resolution center, the Neighborhood Justice Center of Atlanta, or such other independent agency providing dispute resolution services in Paulding County or the Metropolitan Atlanta, Georgia area upon which the Parties may mutually agree.

(3) If Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any person other than the Claimant.

(4) Any settlement of the Claim through mediation shall be documented in writing by the mediator. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation process, or within such time as determined by the mediator, the mediator

shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the parties are at an impasse and the date that mediation was terminated.

(5) Within five days of the Termination of Mediation, the Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent and the Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(c) Final and Binding Arbitration.

(1) If the Parties do not agree in writing to a settlement of the Claim within 15 days of the Termination of Mediation, the Claimant shall have 15 additional days to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit "B" or such rules as may be required by the agency providing the arbitrator. If not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to persons other than Claimant.

(2) This subsection (c) is an agreement to arbitrate and is specifically enforceable under the Georgia Arbitration Act. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Georgia.

9.04. Allocation of Costs of Resolving Claims.

(a) Subject to Section 9.04(b), each party shall bear its own costs, including any attorneys fees incurred, and each party shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the arbitration proceeding ("Post Mediation Costs").

(b) Any Award which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add Claimant's Post Mediation Costs to the Award, such costs to be borne equally by all Respondents. Any Award which is equal to or less favorable to Claimant than any Respondent's Settlement Offer shall award to such Respondent its Post Mediation Costs.

9.05. Enforcement of Resolution. After resolution of any Claim, if any party fails to abide by the terms of any agreement or Award, then any other party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 9.03. In such event, the party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying party, from all such parties pro rata) all costs incurred in enforcing such

agreement or Award, including, without limitation, attorney's fees and court costs.

**ARTICLE X**  
**DURATION AND AMENDMENT**

10.01 Duration. This Declaration and the Restrictions contained herein shall run with and bind the Property for a period of twenty (20) years from and after the date when this Declaration is filed for record with the Clerk of the Superior Court of Paulding County, Georgia, after which time this Declaration and the Restrictions shall be automatically renewed for successive periods of ten (10) years provided, however, that after the end of the said twenty (20) year period, and during any ten (10) year renewal period (but only during such renewal), this Declaration and the Restrictions contained herein may be terminated by an instrument executed by the proper Association officers and recorded in the office of the Clerk of the Superior Court of Paulding County, Georgia, or in such other place of recording as may be appropriate at the time of the execution of such instrument, pursuant to a resolution approving such termination which is approved by a two-thirds (2/3) vote of those Members of the Association who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the provisions of the By-laws of the Association.

10.02 Amendments by Declarant. During any period in which Declarant retains the right to appoint and remove any directors and officers of the Association, Declarant may amend this Declaration by an instrument in writing filed and recorded with the Clerk of the Superior Court of Paulding County, Georgia, without the approval of any Owner or mortgagee provided, however, that (i) in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of such Owner's Lot or of the Common Property as set forth in this Declaration or if such amendment adversely affects the title in this Declaration or if such amendment adversely affects the title to any Lot, such amendment shall be valid only upon the written consent thereto by a majority in number of then existing Owners affected thereby, or (ii) in the event that such amendment would materially and adversely affect the security title and interest of any mortgagee, such amendment shall be valid only upon the written consent thereto of such mortgagees so affected. Any amendment made pursuant to this Section 10.02 shall be certified by Declarant as having been duly approved by Declarant, and such Owners and mortgagees if required, and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself. Each Owner, by acceptance of a deed or other conveyance to a Lot, agrees to be bound by such amendments as are permitted by this Section 10.02 and further agrees that, if requested to do so by Declarant, such Owner will consent to the amendment of this Declaration or any other instruments relating to the Development if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots subject to this Declaration,

(iii) if such amendment is required by an institutional or governmental lender or 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 any Lot subject to this Declaration, (iv) if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots subject to this Declaration, or (v) if such amendment is necessary to correct a scrivener's error in the drafting of this Declaration.

10.03 Amendment by Association. Amendments to this Declaration, other than those authorized by Section 10.02 hereof, shall be proposed and adopted in the following manner:

(a) Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Association at which such proposed amendment is to be considered and shall be delivered to each Member of the Association.

(b) At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board or by Members of the Association. Such amendment must be approved by Owners holding at least two-thirds (2/3) of the total votes in the Association provided, however (i) that any amendment which materially and adversely affects the security, title and interest of any mortgagee must be approved by such mortgagee, and (ii) during any period in which Declarant has the right to appoint and remove officers and directors of the Association or has The right to appoint all members of the ACC, such amendment must be approved by Declarant.

(c) The agreement of the required percentage of the Owners and, where required, Declarant and any mortgagee, to any amendment of this Declaration shall be evidenced by their execution of such amendment, or in the alternative, and provided that Declarant does not then have the right to approve such amendment, the sworn statement of the President and any Vice President or the Secretary of the Association attached to or incorporated in the amendment executed by the Association, which sworn statement shall state unequivocally that the agreement of the required parties was lawfully obtained. Any such amendment of this Declaration shall become effective only when recorded or at such later date as may be specified in the Amendment itself.

#### ARTICLE XI

#### ANNEXATION

11.01 Additional Property. Additional real property may be annexed to the Property by Declarant without the consent of the Members at any time for a period of twelve (12) years following the date on which this Declaration is filed in the office of the Clerk of Superior Court of Paulding County, Georgia. Such annexation shall be accomplished by filing in the Office of the Clerk of the Superior Court of Paulding County, Georgia (1) an approved subdivision plat containing a statement that expressly sets forth Declarant's intention to make such annexed real property subject to the provisions of this Declaration, and/or (2) an amended and/or supplemental declaration which states that the Declaration shall also expressly apply to the property described in said

document. At the expiration of twelve years following the date of filing of this Declaration, no real property may be annexed to the Property unless such annexation is approved by two-thirds (2/3) vote of the Members of this Association who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the provisions of the By-laws of the Association.

**ARTICLE XII**  
**MISCELLANEOUS**

12.01 No Reverter. No restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

12.02 Severability. A determination by a court that any provision hereof is invalid for any reason shall not affect the validity of any other provision hereof.

12.03 Headings. The headings of the Articles and Sections hereof are for convenience only and shall not affect the meaning or interpretation or the contents of this Declaration.

12.04 Gender. Throughout this Declaration, the masculine gender shall be deemed to include the feminine and neuter and the singular, the plural, and visa versa.

12.05 Notices. All amendments, notices, requests, objections, waivers, rejections, agreements, approvals, disclosures, or consent of any kind made pursuant to this Declaration, whether made by Declarant, the Association, the ACC, the Owner, or any other person, shall be in writing. All such writings shall be sufficient only if hand delivered or if deposited in the United States Mail, and sent to the following addresses:

(a) Declarant:       Encore of Georgia, Inc.  
                          P.O. Box 22  
                          Acworth, GA 30101

(b) Owners: Each Owner's address as registered with the Association in accordance with the By-laws.

Any written communication transmitted in accordance with this Section 12.06 shall be deemed received when hand delivered or on the third (3rd) day following the day such written notice is deposited in the United States mail.

12.06 No Liability of Declarant. Declarant has, using best efforts and all due diligence, prepared and recorded this Declaration so that each and every Owner shall have the right and the power to enforce the terms and provisions of this Declaration against every other Owner. However, in the event that this Declaration is, for any reason whatsoever, unenforceable by an Owner (or any other person) in a court of law or otherwise, Declarant shall have no liability of


any kind as a result of such unenforceability, and each and every Owner, by acceptance of a deed conveying a Lot, acknowledges that Declarant shall have no such liability.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed and sealed the day and year first above written:


ENCORE OF GEORGIA, INC.

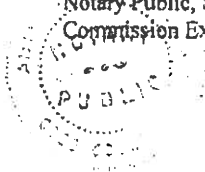
BY:   
William P. Tutherow, CEO

BY:   
Richard R. Hayes, Secretary

  
Unofficial Witness

Sworn to and Subscribed before me this  
7th day of March, 2007.

  
Notary Public, State of Georgia  
Commission Expires 12-14-2010



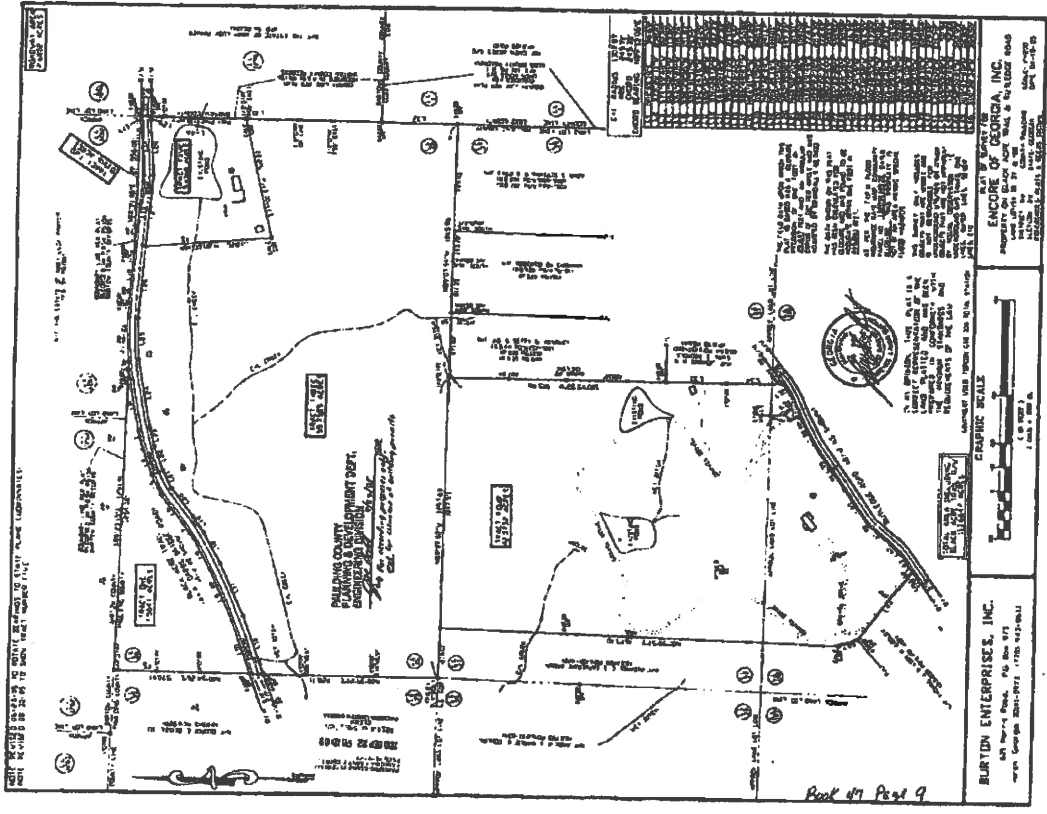


**EXHIBIT "A"**

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lots 36, 37 and 108 of the 3rd District, 3rd Section, Paulding County, Georgia, and being more particularly shown as "Tract Two", "Tract Three", Tract Four" and Tract Five" on, and delineated according to, that certain Plat of Survey for Encore of Georgia, Inc. by Burton Enterprises, Inc. and bearing the seal of Lawrence Lamar Burton, G.R.L.S. #2485, dated April 15, 2005, which plat is recorded at Plat Book 47, Page 9, in the Office of the Clerk of Superior Court of Paulding County, Georgia, and which plat is incorporated herein by this reference thereto for a more complete description of the courses and distances, metes and bounds of the lands described herein.

**LESS AND EXCEPTING:**

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 36 of the 3rd District, 3rd Section, Paulding County, Georgia, and being more particularly described as consisting of 2.1778 acres according to a plat of survey by Lawrence Lamar Burton, Georgia Registered Land Surveyor # 2485 for Encore of Georgia, Inc. dated January 31, 2007, which plat is recorded at Plat Book 052, Page 017, in the Office of the Clerk of Superior Court of Paulding County, Georgia, and which plat is incorporated herein by this reference thereto for a more complete description of the courses and distances, metes and bounds of the lands described herein.



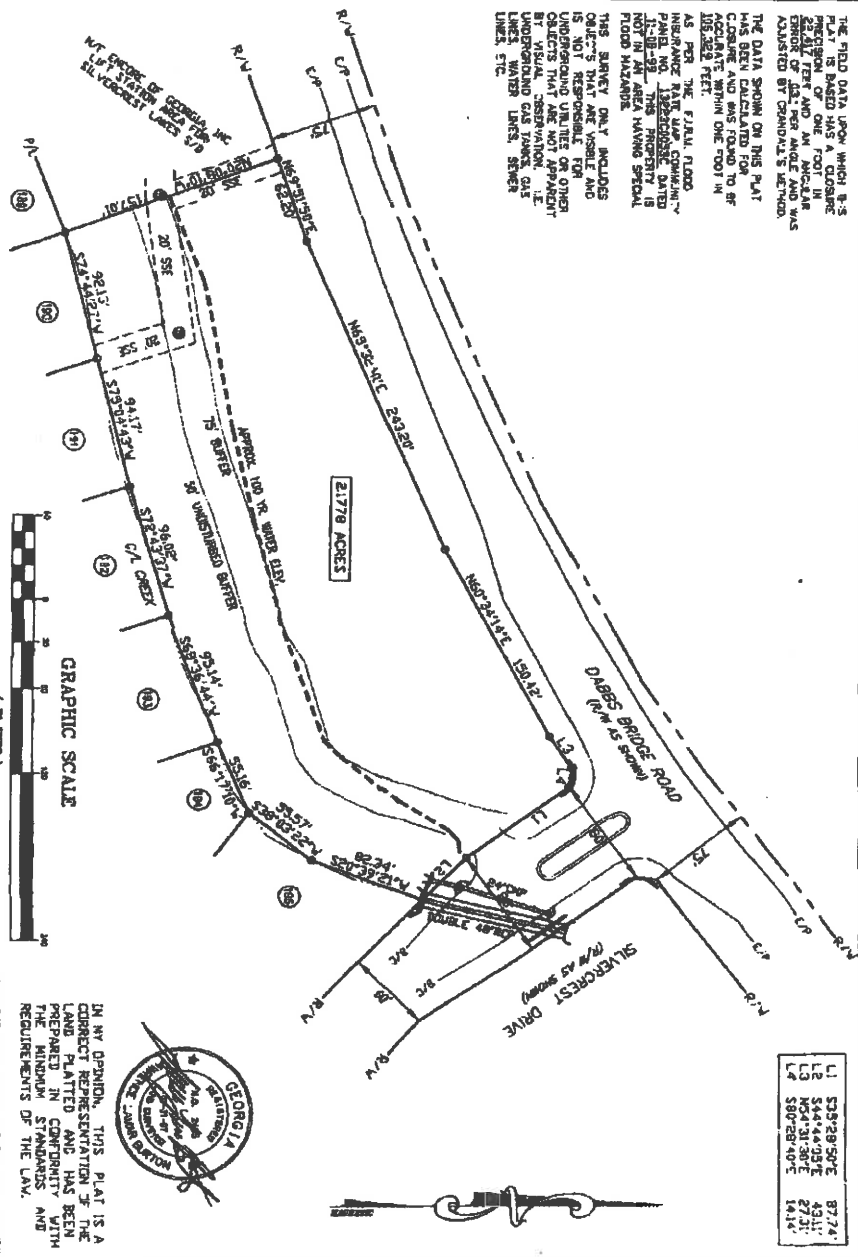
**ENCORE OF GEORGIA, INC.**  
 PROPERTY OF ENCORE OF GEORGIA, INC.  
 10000 BUCKLE UP DRIVE, SUITE 100  
 ATLANTA, GEORGIA 30338  
 (404) 252-1000

**GRAPHIC SCALE**  
 1" = 100' (1:1200)  
 1" = 200' (1:2400)  
 1" = 400' (1:4800)

**BURTON ENTERPRISES, INC.**  
 441 North Peach, P.O. Box 973  
 Marietta, Georgia 30067-0973 (770) 422-9411

Book 471 Page 9

THE FIELD DATA UPON WHICH THIS PLAT IS BASED HAS A CLOSURE OF 1/100,000. THE FIELD DATA HAS BEEN CALCULATED FOR CLOSURE AND WAS FOUND TO BE ACCURATE WITHIN ONE FOOT IN 100,000 FEET. THIS PROPERTY IS NOT IN AN AREA HAVING SPECIAL FLOOD HAZARDS. THIS SURVEY ONLY INCLUDES OBJECTS THAT ARE VISIBLE AND IS NOT RESPONSIBLE FOR OTHER OBJECTS THAT ARE NOT APPARENT BY VISUAL OBSERVATION, I.E. UNDERGROUND GAS TANKS, GAS LINES, WATER LINES, SEWER LINES, ETC.



L1	239,285 SQ FT	8774
L2	344,446 SQ FT	2311
L3	231,111 SQ FT	1414
L4	507,284 SQ FT	1414



IN MY OPINION, THIS PLAT IS A CORRECT REPRESENTATION OF THE LAND PLATED AND HAS BEEN PREPARED IN CONFORMITY WITH THE MINIMUM STANDARDS AND REQUIREMENTS OF THE LAW.

PLAT PREPARED USING TRIMBLE 415 304 TOTAL STATION

**BURTON ENTERPRISES, INC.**  
 621 Morris Road, P.O. Box 873  
 Hiram, Georgia 30141-0873 (770) 943-8813

PLAT OF SURVEY FOR:  
**ENCORE OF GEORGIA, INC.**

LAND LOTS: 36 COUNTY: PALM BEACH SCALE: 1"=60'  
 DISTRICT: 3rd STATE: FLORIDA DATE: 01-31-07  
 SECTION: 3rd