

20

DECLARATION OF COVENANTS AND RESTRICTIONS
ESTABLISHING AND PROVIDING FOR
THE RETREAT AT STORM BRANCH COMMUNITY ASSOCIATION, INC.

THIS DECLARATION made this 27th day of March 2009, by STORM BRANCH VENTURES LLC hereinafter called "Company."

WITNESSETH:

WHEREAS, Company is the owner of the real property described in Article II of this Declaration and desires to create thereon a planned development community with a balanced representation of residential and recreational uses to be known as "THE RETREAT AT STORM BRANCH",

WHEREAS, Company desires to provide for the preservation of values and for the maintenance of common facilities and services and for a vehicle for the administration and enforcement of covenants and restrictions; and

WHEREAS, Company has caused to be incorporated under the laws of the State of South Carolina, a non-profit corporation, The Retreat at Storm Branch Community Association, Inc., for the purpose of exercising the functions aforesaid, and which are hereinafter more fully set forth;

NOW, THEREFORE, the Company declares that the real property described in Article II and such additions thereto as may hereinafter be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed, given, donated, leased, occupied and used subject to the covenants, restrictions, conditions, easements, changes, assessments, affirmative obligations, and liens (hereinafter sometimes referred to as "the Covenants") hereinafter set forth.

ARTICLE I

DEFINITIONS

The following words and terms when used in this Declaration or any supplemental declaration (unless the context shall clearly indicate otherwise) shall have the following meanings:

- (a) "Association" shall mean and refer to The Retreat at Storm Branch Community Association, Inc., a South Carolina non-profit corporation, its successors and assigns.
- (b) "Common Properties" shall mean and refer to those tracts of land with any improvements thereon which are deeded or leased to the Association and designated in said deed or lease as "Common Properties." The term "Common Properties" shall also include any personal property acquired by the Association if said property is designated a "Common Property." All Common Properties are to be devoted to and intended for the common use and enjoyment of the Owners, Residents, and their guests, and visiting members of the general public (to the extent permitted

by the Board of Directors of the Association) subject to the fee schedules and operating rules adopted by the Association, provided, however, that any lands which are leased by the Association for use on Common Properties shall lose their character as Common Properties upon the expiration of such Lease.

- (c) "Company" shall mean STORM BRANCH VENTURES LLC, and its successors and assigns.
- (d) "Family Dwelling Unit" shall mean and refer to any improved property intended for use as a single-family dwelling. A parcel of land shall not be deemed to be improved until the improvements being constructed on said parcel are sufficiently complete to be subject to assessment as improved properties.
- (e) "Intended for Use" shall mean the use intended for various parcels within the Properties as shown on the Master Plan of The Retreat at Storm Branch, prepared by the Company, or the use to which any particular parcel of land is restricted by covenants expressly set forth or incorporated by reference in deeds by which the Company has conveyed the property. The intended use of parcels may also be indicated by plats or other documents recorded in the RMC Office of Aiken County, South Carolina.
- (f) "Lot" or "Residential Lot" shall mean any subdivided but unimproved parcel of land located within the Properties which is intended for use as a site for a single-family detached dwelling as shown upon any recorded subdivision plat of any part of the Properties. A parcel of land shall be deemed to be unimproved until the improvements being constructed thereon are sufficiently complete to be subject to assessments as improved properties.
- (g) "Master Plan" shall mean and refer to the drawings which represent the plan for the present and future development of The Retreat at Storm Branch.
- (h) "Member" shall mean and refer to all those Owners who are members of the Association as defined in Section 1 of Article III.
- (i) "Owner" shall mean and refer to the Owner (including the Company) as shown by the real estate records in the RMC Office of Aiken County, South Carolina, whether it be one or more persons, firms, associations, corporations or other legal entities, of fee simple title to any Residential Lot, Family Dwelling Unit, or Unsubdivided Land situated upon the Properties but, notwithstanding any applicable theory of a mortgage or deed to secure debt, shall not mean or refer to the mortgagee or holder of a deed to secure debt, its successors or assigns, unless and until such mortgagee or holder of a deed to secure debt has acquired title pursuant to foreclosure or by a proceeding or deed in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of an Owner. In the event that there is recorded in the RMC Office of Aiken County, South Carolina, a long-term contract of sale covering any lot or parcel of land within the Properties, the Owner of such lot or parcel of land shall be the purchaser under said contract and not the fee simple title holder. A long-term contract of sale shall be one where the purchaser is required to make payments for the property for a period extending beyond nine (9)

- months from the date of the contract, and where the purchaser does not receive title to the property until such payments are made although the purchaser is given the use of said property.
- (j) The "Properties" shall mean and refer to the existing Property described in Article II hereof, and such additions thereto, as are subjected to this Declaration or any supplemental declaration under the provisions of Article II hereof.
 - (k) "Referendum" shall mean and refer to the power of all or some specific portion of the Members to vote by mailed ballots on certain actions by the Board of Directors of the Association.
 - (l) "Resident" shall mean and refer to each Owner and Tenant of a Family Dwelling Unit together with the members of his family living in such Family Dwelling Unit.
 - (m) "The Retreat at Storm Branch" shall mean and refer to the lands in the City of Aiken, Aiken County, South Carolina, which have been subjected to this Declaration and which are shown on the Development Plan.
 - (n) "Tenant" shall mean and refer to the lessee under a written agreement for the rent and hire of a Family Dwelling Unit.
 - (o) "Unsubdivided Land" shall mean and refer to all land which has been subjected to the terms of this Declaration and which has not been subdivided into Residential Lots through metes and bounds subdivision plats filed for record in the RMC Office of Aiken County, South Carolina. For the purposes of this Declaration, the following classifications of property shall not be deemed "Unsubdivided Land" and shall be expressly excepted from the definition thereof.
 - (1) All lands committed to the Association through express, written notification by the Company to the Association of intent to convey to the Association.
 - (2) All lands designated on the Development Plan for intended use, or by actual use if applicable, for outdoor recreation facilities or open spaces.
 - (3) All lands designated or used, in any way, as Common Properties.

ARTICLE II

Section 1. Existing Property. The real property which is, and shall be held transferred, sold, conveyed, given, donated, leased, occupied subject to these Covenants is described as follows:

All that tract or parcel of land situate, lying and being in
the City of Aiken, Aiken County, South Carolina, which
is more particularly described in Exhibit "A" attached hereto
and by specific reference made a part hereof.

All of the real property hereinabove described shall sometimes be referred to herein as the "Existing Property." The Company intends to develop the Existing Property in accordance with a Development Plan which it has had prepared and which will be displayed upon request by its sales agents. The Company reserves the right to review and modify the Development Plan at its sole option. The Development Plan shall

not bind the Company, its successors and assigns to adhere to the Development Plan in the development of the land shown thereon. Subject to its right to modify the Development Plan as stated herein, the Company shall convey to the Association properties designated for such conveyance on the Development Plan. Once conveyed to the Association these properties shall become Common Properties. The Company shall have full power to add to, subtract from or make changes in the Development Plan regardless of the fact that such actions may alter the relative maximum potential voting strength of the various types of membership of the Association of the financial obligations of the Members of the Association.

Section 2. Additions to Existing Property. Additional lands may become subject to this Declaration in the following manner:

- (a) Mergers. Upon merger or consolidation of the Association with another association, as provided for in the Bylaws of the Association, its property rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or in the alternative, the properties, rights and obligations of another association may, by operation of law, be added to the Properties of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the Existing Property, together with the covenants and restrictions established upon any other properties, as one plan. No merger or consolidation shall effect any revocation, change, or addition to the Covenants established by this Declaration within the Properties, including, without limitation, the maximum limits on assessments and dues of the Association, or any other matter substantially affecting the interests of Members of the Association.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every Owner and the Company shall be a Member of the Association.

Section 2. Voting Rights. The Association shall have two types of regular voting membership.

TYPE "A": Type "A" Members shall be all Owners of Residential Lots, Family Dwelling Units, and Unsubdivided Land, except the Company so long as it is a Type "B" Member. Each Type "A" Member shall be entitled to one vote regardless of the number of properties which he might own or the size or value of such properties.

TYPE "B": The Type "B" Member shall be the Company. The Type "B" Member shall be entitled to the same number of votes as are cumulatively held from time to time by all Type "A" Members plus one vote. The Company shall continue as a Type "B" Member until January 1, 2019, or such earlier time as it might, in its sole discretion, elect to relinquish such membership. At such time as the Company ceases to be a Type "B" Member, it shall be a Type "A" Member if it is an owner.

When any property entitling the Owner to membership in the Association is owned of record in the name of two or more persons or entities, whether fiduciaries, joint tenants, tenants in common, tenants in partnership or in any other manner of joint or common ownership, or if two or more persons or entities have the same fiduciary relationship respecting the same property or if property is owned by a corporation, then such Owners shall file with the Secretary of the Association an instrument in writing signed by all such Owners and designating one Owner (or in the case of a corporation, one of its officers) to cast the vote which is attributable to such property.

The principles of this section shall apply, insofar as possible, to execution of proxies, waivers, consents, or objections and for the purpose of ascertaining the presence of a quorum.

Section 3. Governance. The Association shall be governed by a Board of Directors consisting of three (3), five (5), seven (7), nine (9), or eleven (11) Members. Initially, the Board shall consist of three (3) Members, with the number in the subsequent years to be determined by the Members of the Board of Directors as provided for in the Bylaws of the Association. Election of the Board of Directors shall be by the Members as provided in the Bylaws.

Section 4. Members to Have Power of Referendum in Certain Instances. Where specifically provided for herein, the Members, or some specific portion thereof, shall have the power to approve or reject certain actions proposed to be taken by the Association by Referendum including, without limitation, the levy by the Association of any special assessment, the increase of maximum assessments by the Association in excess of that provided for herein, and the addition of functions or services which the Association is authorized to perform. In the event fifty-one (51%) per cent, or more, of the votes actually returned to the Association within the specified time shall be in favor of such action, the Referendum shall be deemed to "pass" and the action voted upon will be deemed to have been authorized by the Members; provided, however, that if a higher percentage vote required to "pass" shall be specifically expressed herein, that higher percentage shall control in that instance. The Board of Directors may not undertake any action requiring a referendum without complying with the provisions therefore.

Section 5. Quorum Required for any Action Authorized at Regular or Special Meetings of the Association. The quorum required for any action which is subject to a vote of the Members at an open meeting of the Association (as distinguished from the Referendum) shall be as follows:

The first time a meeting of the Members of the Association is called to vote on a particular action proposed to be taken by the Association the presence at the meeting of Members or proxies entitled to cast sixty (60%) percent of the total vote of the membership shall constitute a quorum. In the event the required quorum is not present at any such meeting, a second meeting may be called subject to the giving of proper notice and there shall be no quorum requirement for such second meeting. Unless otherwise provided, any reference hereafter to "votes cast at a duly called meeting" shall be construed to be subject to the quorum requirements established by this Article III, Section 5, and any other requirements for such "duly called meeting" which may be established by the Bylaws of the Association. This provision shall not apply when the proposed action is the amendment of this Declaration and the quorum requirement established by Article VIII, Section 2, shall govern in that instance. For the purpose of this section, "proper notice" shall be deemed

to be given when given each Member not less than thirty (30) days prior to the date of the meeting at which any proposed action is to be considered.

Section 6. Proxies. All members of the Association may vote and transact business at any meeting of the Association by proxy authorized in writing, provided, however, that proxies shall not be allowed for any action which is subject to a Referendum, in which case the votes of all the Members polled shall be made by specially provided ballots mailed or delivered to the Association.

Section 7. Ballots By Mail. When required by the Board of Directors, there shall be sent with notices of regular or special meetings of the Association, a statement of certain motions to be introduced for vote of the Members and a ballot on which each Member may vote for or against each motion. Each ballot which is presented at such meeting shall be counted in calculating the quorum requirements set out in Section 5 of this Article III. Such ballots shall not be counted in determining whether a quorum is present to vote upon motions not appearing on the ballot.

ARTICLE IV

PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Member's Easements of Enjoyment in Common Properties. Subject to the provisions of these Covenants, the rules and regulations of the Association, and any fees or charges established by the Association, every Member and every guest or Tenant of any Member shall have an easement of enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with title of every Residential Lot or Family Dwelling Unit.

A Member's spouse and dependent children shall have the same easement of enjoyment hereunder as a Member.

Section 2. Title to Common Properties. The Company shall have the option to convey to the Association, at no cost to the Association, by deed those parcels of land and facilities regarded as Common Properties.

All said parcels of land may be conveyed to the Association subject to:

- (a) all restrictive covenants of record at the time of the conveyance; and
- (b) all existing mortgages, provided, however, that in no event shall the Association be obligated to assume the payment of the principal or interest on any such mortgages. The obligation to make payments of principal and interest in accordance with their due dates on all mortgages affecting property conveyed to the Association shall continue to be the sole obligation of the Company.

Section 3. Extent of Members Easements. The easements of enjoyment created hereby shall be subject to the following:

- (a) The right of the Association to suspend the rights and easements of enjoyment of any Member or Tenant or guest of any Member for any period during which the payment of any assessment against property owned by such Member remains delinquent, and for any period not to exceed sixty (60) days for any infraction of its published rules and regulations, it being understood that

any suspension for either non-payment of any assessment or a breach of the rules and regulations of the Association shall not constitute a waiver or discharge of the Member's obligation to pay the assessment.

- (b) The right of the Company or the Association by its Board of Directors to dedicate or transfer to any public or private utility, utility or drainage easements on any part of the Common Properties.
- (c) The right of the Association to give or sell all or any part of the Common Properties including lease-hold interests, to any public or private concern for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such gift or sale or determination as to the purposes or as to the conditions thereof shall be effective unless such dedication, transfers and determinations as to purposes and conditions shall be authorized by the affirmative vote of three-fourths (3/4) of the votes cast at a duly called meeting of the Association, subject to the quorum requirements established by Article III, Section 5, and unless written notice of the meeting and of the proposed agreement and action thereunder is sent to every Member of the Association at least thirty (30) days prior to such meeting. A true copy of such resolution together with a certificate of the results of the vote taken thereon shall be made and acknowledged by the President or Vice-President and Secretary or Assistant Secretary of the Association and such certificate shall be annexed to any instrument of dedication or transfer affecting the Common Properties prior to the recording thereof. Such certificates shall be conclusive evidence of authorization by the membership.
- (d) The rights of reversion of the lessor of any Common Properties leased by the Association upon expiration of the lease.

ARTICLE V

COVENANTS FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligations of Assessments. The Company covenants, and each Owner of any Residential Lot or Family Dwelling Unit, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to all the terms and provisions of this Declaration and to pay to the Association: (1) regular annual assessments or charges; and (2) special assessments or charges for the purposes set forth in this Article, such assessments to be fixed, established and collected from time to time as hereinafter provided. The regular annual assessment and special assessments together with such interest thereon and cost of collection therefore as hereinafter provided, shall be a charge and continuing lien on the real property and improvements thereon against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the Owner of such real property at the time when the assessment first became due and payable. In the case of co-ownership of a Residential Lot or Family Dwelling Unit, all of such co-owners shall be jointly and severally liable for the entire amount of the assessment.

Section 2. Purpose of Regular Annual Assessment. The regular annual assessments levied by the Association shall be used exclusively for the improvement, maintenance, repair, enhancement, enlargement and operation of the Common Properties, and to provide services with the Association is authorized to provide.

Section 3. Application of "Maximum" Assessment. The regular annual assessment shall be levied by the Association in an amount not to exceed the maximum assessment as set forth in the schedule herein below, and such maximum is annually increased pursuant to the provisions of this Declaration. If the Board of Directors of the Association, by majority vote, determines that the functions of the Association may be properly funded by an assessment less than the maximums set out below, the Association may levy an assessment in such lesser amount. Any time the actual regular assessment levied by the Association is less than the maximum annual assessment; such decrease shall be in the same proportion between Residential Lots and Family Dwelling Units as the maximum assessments permitted against such types of property. The levy of a regular annual assessment less than the maximum regular assessment in one year shall not affect the Board's right to levy the maximum regular annual assessment in subsequent years. If the Board of Directors shall levy less than the regular annual assessment for any assessment year and thereafter, during such assessment year, determine that the important and essential functions of the Association cannot be funded by such lesser assessment, the Board may, by majority vote, levy a supplemental regular annual assessment. In no event shall the sum of the initial and supplemental regular annual assessments for that year exceed the applicable maximum regular annual assessment.

If the Board of the Association, by majority vote, determines that the important and essential functions of the Association will not be properly funded in any year by the maximum regular annual assessment, it may call a Referendum to vote on the question of approving a specified increase in such maximum assessment. Should two-thirds (2/3) of the votes cast in such Referendum be in favor of such specified increase the proposed increased assessment shall be levied. An increase in the maximum regular annual assessment which is limited to one year shall in no way affect assessments for subsequent years.

- (a) The maximum regular annual assessment shall be the sums calculated in accordance with the following schedule as may be increased in each instance by an inflation adjuster as set forth in this Article V, Section 3(f) or as may be increased as herein otherwise provided:

<u>Property Type</u>	<u>Maximum Regular Annual Assessment</u>
Residential Lots	\$500.00
Family Dwelling Lots	\$100.00

- (b) Property shall not be classified for purposes of these Covenants and these regular annual assessments as a Residential Lot or Family Dwelling Unit until the first day of the calendar year following the year in which such Property meets the requirements of one of the categories. For purposes of determining assessments, real property shall be deemed to be improved only after the improvements being constructed thereon are determined by the Board of Directors of the Association to be substantially complete. A lot bought by a builder for purposes of building a speculative home shall not be assessed until the January following a twelve (12) month

construction period unless the home has been sold. Lots owned by the Company shall not be assessed. Builders of pre-sold or speculative homes shall not have use of any community amenities. New home sales will have the assessment for that year prorated from the date of closing.

- (c) The regular annual assessment shall be billed annually in February of each year. All regular annual assessment bills shall be due and payable thirty (30) days from the date of mailing. The Board of Directors may, at its discretion, allow monthly, semi-annual or quarterly installment payments of regular annual assessments on property owned by Members other than the Company.
- (d) For purposes of calculating the regular annual assessment, property shall be characterized as of January 1 of each year and the annual assessment based on the character of the property as of January 1 of that particular calendar year.
- (e) All assessments charged to the Association shall be rounded off to the nearest dollar.
- (f) From and after January 1, 2010, the maximum regular annual assessment shall be increased each year by the Board of Directors of the Association by an amount not in excess of five (5%) per cent per year over the previous year, or the percentage increase between the first month and the last month of an annual assessment period in the Consumer Price Index, U.S. City Average, (hereafter "C.P.I.") issued by the U.S. Bureau of Labor Statistics in its monthly report entitled "The Consumer Price Index, U.S. City Average and Selected Areas" whichever of these two percentage figures is larger. However, the Board of Directors may suspend such automatic increase for any one (1) year in its own discretion. In the event that the C.P.I. referred to above shall be discontinued, then there shall be used the most similar index published by the United States Government that may be procured indicating changes in the cost of living.
- (g) If the Board of Directors of the Association determines by a majority vote that it is necessary to permanently raise the amount of the maximum regular annual assessment other than the amount provided for in Article V, Section 3(f), in order to properly fund the important and essential functions of the Association it may call a Referendum to vote on the question of approving a specified permanent increase in such maximum assessment. An increase in the maximum regular annual assessment, other than that provided for in Article V, Section 3(f), shall be made only upon the favorable vote of two-thirds (2/3) of the votes cast in such a Referendum. The proportionate amount of any such increase in the maximum regular annual assessment shall be the same for Residential Lots, Family Dwelling Units, or Unsubdivided Lands. Any permanent increase in the maximum assessment which is made disproportionately shall be done only upon the favorable vote of seventy-five (75%) percent of the votes cast in a Referendum and the favorable vote of seventy-five (75%) per cent of the votes cast in such Referendum by the Members of the classes whose proportionate share of the maximum regular annual assessment is being increased.

Section 4. Special Assessments for Improvements and Additions. In addition to the annual regular

assessments authorized by Section 3 hereof, the Association may levy special assessments for the following purposes:

- (a) Construction or reconstruction, repair or replacement of capital improvements upon the Common Properties including the necessary fixtures and personal property related thereto;
- (b) For additions to the Common Properties;
- (c) To provide for the necessary facilities and equipment to offer the services authorized herein;
- (d) To repay any loan made to the Association to enable it to perform the duties and functions authorized herein.

Before any special assessment is levied by the Association, it must receive the assent of a majority of the votes of the Members responding to a Referendum. In mailing out the ballot for the Referendum the Association shall include in the material one statement from those Directors favoring the special assessment and one statement from those Directors opposing the special assessment (if any) containing the reasons for those Directors' support and opposition for the assessment. Neither statement shall exceed five (5) pages in length.

This provision shall be interpreted to mean that the Association may make in any one year an annual assessment up to the maximum set forth in Section 3 of this Article plus an additional special assessment or assessments. Such special assessment(s) in any one year may not exceed a sum equal to the amount of the maximum regular annual assessment for such year except for emergency or repairs required as a result of storm, fire, flood, wind, natural disaster or other casualty loss. The fact that the Association has made an annual assessment for an amount up to the permitted maximum shall not affect its right to make a special assessment during the year.

The proportion of each special assessment to be paid by the owners of the various classifications of assessable property shall be equal to the proportion of the regular assessments made for the assessment year during which such special assessments are approved by the Members.

Section 5. Reserve Funds. The Association may establish reserve funds from its regular annual assessments to be held in reserve in an interest drawing account or investments as a reserve for (a) major rehabilitation or major repairs, (b) for emergency and other repairs required as a result of storm, fire, flood, wind, natural disaster, or other casualty loss, and (c) initial costs of any new service to be performed by the Association.

Section 6. Change in Maximum Amounts of Annual Assessments Upon Merger or Consolidation. The limitations of Section 3 hereof shall apply to any merger or consolidation in which the Association is authorized to participate under Article II, Section 2, hereof, and under the Bylaws of the Association.

Section 7. Quorum for any Action Authorized Under This Article. The quorum required for any action authorized to be taken by the Association Members under this Article shall be as follows:
The first time any meeting of the Members of the Association is called to take action under this Article the presence at the meeting of Members or proxies entitled to cast sixty (60%) percent of the total vote of the membership shall constitute a quorum. If the required quorum is not present at any such meeting, a second meeting may be called subject to the giving of proper notice and the required quorum at such subsequent

meeting shall be the presence of Members or proxies entitled to cast twenty-five (25%) percent of the total vote of the Membership of the Association.

Section 8. Date of Commencement of Annual Assessments. Due Date. Notwithstanding anything in the foregoing to the contrary, the regular annual assessment provided for herein shall commence no earlier than January 1, 2010.

Section 9. The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence against all but the Owner of payment of any assessment therein stated to have been paid.

Section 10. Effect of Non-Payment of Assessment: The Personal Obligation of the Owner; the Lien; Remedies of Association. If the regular annual assessment or any special assessment is not paid on or before past due date which shall be established by the Board of Directors, then such assessment shall become delinquent and shall (together with interest thereon at the maximum annual rate permitted by law from the past due date and cost of collection thereof as hereinafter provided) become a charge and continuing lien on the land and all improvements thereon, against which each such assessment is made, in the hands of the then Owner, his heirs, devisees, personal representatives, tenants, successors, and assigns.

If the assessment is not paid within thirty (30) days after the past due date, the Association may at its election bring an action to foreclose its lien on the property or bring an action at law against the Owner personally. If a delinquent assessment is put in the hands of an attorney at law for collection, there shall be added to the amount of such assessment all costs of collection including but not limited to fifteen (15%) percent of the amount of the delinquent assessment and all interest thereon as reasonable attorney's fees.

Section 11. Subordination of the Lien to Deeds to Secure Debt. The lien of the assessments provided for herein shall be subordinate to the lien of any deed or deeds to secure debt now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to foreclosure, or any other proceeding or deed in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments accruing after conveyance by the creditor to a subsequent Owner, provided, however, that the creditor shall not be liable for assessments until it has held title to the property for more than one (1) year. Sums collected by foreclosure of said deed to secure debt shall be applied first to the indebtedness secured thereby and all cost of collection, second to past due assessment and third to assessments which have accrued but have not become due and payable.

Section 12. Exempt Property. The following property, individuals, partnerships or corporations, subject to this Declaration shall be exempted from the assessment, charge and lien created herein:

- (a) The grantee in conveyances made for the purpose of granting utility easements;
- (b) All Common Properties;
- (c) Property which is used in the maintenance and service of facilities within Common Properties.
- (d) Lots owned by the Company.

Section 13. Annual Statements. The President, Treasurer, or such other officer as may have custody of the funds of the Association shall annually, within ninety (90) days after the close of the fiscal year of the Association, prepare and execute under oath a general itemized statement showing the actual assets and liabilities of the Association at the close of such fiscal year, and a Statement of Revenues, Costs and Expenses. It shall be necessary to set out in the statement the name of any creditor of the Association, provided, however, that this requirement shall be construed to apply only to creditors of more than \$1,000.00. Such officer shall furnish to each Member of the Association who may make request therefore in writing, a copy of such statement, within thirty (30) days after receipt of such request. Such copy may be furnished to the Member either in person or by mail.

Section 14. Annual Budget. The Board of Directors shall prepare and make available to all Members at least sixty (60) days prior to the first day of the following fiscal year, a budget outlining anticipated receipts and expenses for the following fiscal year. The financial books of the Association shall be available for inspection by all Members at all reasonable times.

ARTICLE VI

FUNCTIONS OF ASSOCIATION

Section 1. Ownership and Maintenance of Common Properties. The Association shall be authorized to own, lease and/or maintain Common Properties, equipment, furnishings, and improvements devoted to the following uses:

- (a) For entryways to the Properties;
- (b) For sidewalks, walking paths or trails and bicycle paths throughout the Properties;
- (c) For security and fire protection services including security stations, maintenance building and/or guardhouses, police equipment and fire stations and fire fighting equipment and buildings used in maintenance functions;
- (d) For providing any of the services which the Association is authorized to offer under this Declaration;
- (e) For purposes set out in deeds or long-term leases by which Common Properties are conveyed or leased to the Association, provided that such purposes shall be approved by the Members of the Association as set out in Section 4 of this Article.

Section 2. Services. The Association shall be authorized but not required to provide the following services:

- (a) Cleanup of trash, litter and any other unsightly or hazardous conditions around or along all ponds and other Common Properties within the Properties and also around or along all roads, roadways, roadway medians, parkways and all other public properties which are located within or in a reasonable proximity to the Properties such that their deterioration would affect the appearance of the Properties as a whole;
- (b) Landscaping of roads and parkways, sidewalks and walking paths and any Common Properties;

- (c) Lighting of roads, sidewalks and walking paths throughout the Properties;
- (d) Police protection and security, including but not limited to the employment of police and security guards, maintenance of electronic and other security devices and control centers for the protection of persons and property within the Existing Property, and assistance in the apprehension and prosecution of persons who violate the laws of South Carolina within the Properties;
- (e) Fire protection and prevention;
- (f) Garbage and trash collection and disposal;
- (g) Insect and pest control to the extent that it is necessary or desirable in the judgment of the Board of Directors of the Association to supplement any service which may be provided by the state and local governments;
- (h) The services necessary or desirable in the judgment of the Board of Directors of the Association to carry out the Association's obligations and business under the terms of this document;
- (i) To take any and all actions necessary to enforce all covenants and restrictions affecting the properties and to perform any of the functions or services delegated to the Association in any covenants or restrictions applicable to the Properties;
- (j) To set up and operate an architectural review board in the event that the Association is designated by the Company as the agent of the Company for such purpose;
- (k) To provide day care and child care services;
- (l) To conduct recreation, sport, craft, and cultural programs of interest to Members, their children and guests;
- (m) To construct improvements on Common Properties for use for any of the purposes or as may be required to provide the services as authorized in this Article;
- (n) To provide administrative services including but not limited to: legal, accounting and financial, and communication services informing Members of activities, notice of meeting, Referendums, etc., incident to the above listed services;
- (o) To provide liability and hazard insurance covering improvements and activities on the Common Properties; and
- (p) To provide any or all of the above listed services to another association of owners of real property under a contract, the terms of which must be approved by the Board of Directors.

Section 3. Reduction of Services. During the calendar year of 2010, the Board of Directors of the Association shall define and list a minimum level of services which shall be furnished by the Association. So long as the Company is engaged in the development of properties which are subject to the terms of this Declaration, the Association shall not reduce the level of services it furnishes below such minimum level without first obtaining the written consent of the Company.

Section 4. Obligation of the Association. The Association shall not be obligated to carry out or offer any of the functions and services specified by the provisions of this Article except as specified in Section 3 of this Article. The functions and services to be carried out or offered by the Association at any particular time

shall be determined by the Board of Directors of the Association taking into consideration the funds available to the Association and the needs of the Members of the Association. Special assessments shall be submitted for Referendum as herein provided. The functions and services which the Association is authorized to carry out or to provide, may be added to or reduced (but not below the level of services set out in Section 3 above) at any time upon the affirmative vote of fifty-one (51%) percent or more of those voting in a Referendum conducted by the Board of Directors.

Section 5. Mortgage and Pledge. The Board of Directors of the Association shall have the power and authority to mortgage the property of the Association and to pledge the revenues of the Association as security for loans made to the Association, which loans shall be used by the Association in performing its authorized functions. The Company may make loans to the Association, subject to the approval by the Company of the use to which such loan proceeds will be put and the terms pursuant to which such loans will be repaid. Anything in this Declaration to the contrary notwithstanding, the Association shall not be allowed to reduce the maximum amount of the regular annual assessment at any time there are outstanding any amounts due the Company as repayment of any loans made by the Company to the Association.

Section 6. Maintenance of Public Rights-of-Way. The association shall maintain public rights-of-way where landscaping has been installed and in other cases to preserve the appearance of the property. The association is responsible for the care and maintenance of the island in the entranceway.

ARTICLE VII

ARCHITECTURAL REVIEW

Section 1. Architectural Review. No building, wall, fence, swimming pool, or other structure shall be commenced, erected or maintained upon the Common Properties, nor shall any landscaping be done, nor shall any exterior addition to any existing structure or change or alteration therein, be made until the plans and specifications therefore showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to the harmony with surrounding structures and topography, by the Company, its successors or assigns. This paragraph shall not apply to any property utilized by a governmental entity or institution.

ARTICLE VIII

GENERAL PROVISIONS

Section 1. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable to the Association, the Company and/or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a period of twenty (20) years from the date this Declaration is recorded. Upon the expiration of said twenty (20) year period this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of ten (10) year renewal periods hereunder shall be unlimited and this

Declaration shall be automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional (10) year period; provided, however, that there shall be no renewal or extension of this Declaration if during the last year of the initial twenty (20) year period, or during the last year of any subsequent ten (10) year renewal period, three-fourths (3/4) of the votes cast at a duly held meeting of the Association vote in favor of terminating this Declaration at the end of its then current term. It shall be required that written notice of any meeting at which such a proposal to terminate this Declaration is to be considered, setting forth the fact that such a proposal will be considered, shall be given each Member at least thirty (30) days in advance of said meeting. In the event that the Members of the Association vote to terminate this Declaration, the President and Secretary of the Association shall execute a certificate which shall set forth the resolution of termination adopted by the Association, the date of the meeting of the Association at which such resolution was adopted, the date that notice of such meeting was given, the total number of votes of Members of the Association, the total number of votes required to constitute a quorum at a meeting of the Association, the number of votes necessary to adopt a resolution terminating this Declaration, the total number of votes cast in favor of such resolution, and the total number of votes cast against such resolution. Said certificate shall be recorded in the RMC Office of Aiken County, South Carolina, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration.

Section 2. Amendments. The Company specifically reserves the right to amend this Declaration, or any portion hereof, on its own motion without the consent of any other Owners, from the date hereof until January 1, 2014, so long as the voting power of existing Members is not diluted thereby, nor the amounts of assessments of such existing Members raised or changed in any manner which would adversely affect such Members. In all other instances, the procedure for amendment shall be as follows: All proposed amendments shall be submitted to a vote of the Members at a duly called meeting of the Association and any such proposed amendment shall be deemed approved if three-fourths (3/4) of the votes cast at such meeting vote in favor of such proposed amendment. Notice shall be given each Member at least thirty (30) days prior to the date of the meeting at which such proposed amendment is to be considered. If any proposed amendment to this Declaration is approved by the Members as set forth above, the President and Secretary of the Association shall execute an addendum to this Declaration which shall set forth the amendment, the effective date of the amendment (which is no event shall be less than sixty (60) days after the date of the meeting of the Association at which such amendment was adopted), the date of the meeting of the Association at which such amendment was adopted, the date that notice of such meeting was given, the total number of votes necessary to adopt the amendment, the total number of votes cast for the amendment, and the total number of votes cast against the amendment. Such addendum shall be recorded in the RMC Office of Aiken County, South Carolina. So long as the Company is a Type B Member, no amendment of this Declaration shall be made without the consent of the Company.

The quorum required for any action authorized to be taken by the Association under this Section 2 shall be as follows:

The first time any meeting of the Members of the Association is called to take action under this Section 2 the presence at the meeting of the Members or proxies entitled to cast sixty (60%) percent of the total vote of the Membership shall constitute a quorum. If the required quorum is not present at any such meeting, a second meeting may be called subject to the giving of proper notice and the required quorum at such subsequent meeting shall be the presence of Members or proxies entitled to cast fifty (50%) percent of the total vote of the Association.

Section 3. Notices. Any notice required to be sent to any Member under the provisions of the Declaration shall be deemed to have been properly sent, and notice thereby given, when mailed, with the proper postage affixed, to the address appearing on the Association's Membership list. Notice to one of two or more co-owners or co-tenants of real property shall constitute notice to all co-owners. It shall be the obligation of every Member to immediately notify the Secretary of the Association in writing of any change of address. Any person who becomes a Member following the first day in the calendar month in which said notice is mailed shall be deemed to have been given notice if notice was given to his predecessor in title.

Section 4. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person, persons, or entity violating or attempting to violate or circumvent any covenant or restriction, either to restrain violation or to recover damages, and against the land and to enforce any lien created by these covenants; and failure by the Association or any Member or the Company to enforce any covenant or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce same thereafter.

Section 5. Severability. Should any covenant or restriction herein contained, or any article, section, subsection, sentence, clause, phrase or term of this Declaration be declared to be void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no wise affect the other provisions hereof which are hereby declared to be serveable and which shall remain in full force and effect.

Section 6. Interpretation. The Board of Directors of the Association shall have the right to determine all questions arising in connection with this Declaration of Covenants and Restrictions and to construe and interpret its provisions, and its determination, construction or interpretation, shall be final and binding. In all cases, the provisions of this Declaration of Covenants and Restrictions shall be given that interpretation or construction that will best tend toward the consummation of the general plan of this Declaration.

Section 7. Authorized Action. All actions which the Association is allowed to take under this instrument shall be authorized actions of the Association if approved by the Board of Directors of the Association if approved by the Board of Directors of the Association in the manner provided for in the Bylaws of the Association, unless the terms of this instrument provide otherwise.

Section 8. Limited Liability. In connection with all reviews, acceptances, inspections, permissions, consents or required approvals by or from the Company contemplated under this Declaration, the Company shall not be liable to an Owner or to any other person on account of any claim, liability, damage or expense suffered or incurred by or threatened against an Owner or such other person and arising out of or in any way

relating to the subject matter of any such reviews, acceptances, inspections, permissions, consents or required approvals, whether given, granted, or withheld.

Section 9. Termination of Association. In the event that this declaration be declared to be void, invalid, illegal, or unenforceable in its entirety, or in such a significant manner that the Association is not able to function substantially as contemplated by the terms hereof, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, and such adjudication occurs within five (5) years of the date of recording this Declaration, all Common Properties belonging to the Association at the time of such adjudication shall revert to the Company, and the Company shall own and operate said Common Properties, as Trustee for the use and benefit of Owners within the Properties as set forth below. If said adjudication shall occur on a date more than seven (7) years after the date of recording this Declaration, or if the Members of the Association should vote not to renew and extend this Declaration as provided for in Article VIII, Section 1, all Common Properties owned by the Association at such time shall be transferred to a Trustee appointed by the Superior Court of Aiken County, South Carolina, which Trustee shall own and operate said Common Properties for the use and benefit of Owners within the Properties as set forth below:

- (a) Each Lot or Family Dwelling Unit located within the Properties shall be subject to an annual assessment which shall be paid by the Owner of each such Lot or parcel to the Company or Trustee, whichever becomes the successor in title to the Association. The amount of such annual assessment and its due date shall be determined solely by the Company or the Trustee, as the case may be, but the amount of such annual assessment on any particular Lot or Family Dwelling Unit shall not exceed the amount actually assessed against that Lot or Family Dwelling Unit in the last year that assessments were levied by the Association, subject to the adjustments set forth in subparagraph (b) immediately below.
- (b) The maximum annual assessment which may be charged by the Company or Trustee hereunder on any particular Lot or Family Dwelling Unit may be automatically increased each year by either five (5%) percent or the percentage increase between the first month and the last month of the annual assessment period in the Consumer Price Index, U.S. City Average, (hereafter "C.P.I.") issued by the U.S. Bureau of Labor Statistics in its monthly report entitled "The Consumer Price Index, U.S. City Average and Selected Areas," whichever of these two percentage figures is larger. The actual amount of such increase in the regular maximum annual assessment on a Lot or Family Dwelling Unit shall equal the regular maximum annual assessments on such Lot or Family Dwelling Unit for the previous year multiplied by the larger of the two percentage factors set forth above. If the C.P.I. is discontinued, then there shall be used the most similar index published by the United States Government that may be procured indicating changes in the cost of living.
- (c) Any past due annual assessment together with interest thereon at the maximum rate of interest permitted by law from the due date and all costs of collection including reasonable attorney's fees shall be a personal obligation of the Owner at the time the annual assessment became past

due, and it shall also constitute and become a charge and continuing lien on the Lot or Family Dwelling Unit and all improvements thereon against which the assessment has been made, in the hands of the then Owner, his heirs, devisees, personal representatives and assigns.

- (d) The Company, or the Trustee, as the case may be, shall be required to use the funds collected as annual assessments for the operation, maintenance, repair and upkeep of the Common Properties. The Company or Trustee may charge as part of the cost of such functions the reasonable value of its services in carrying out the duties herein provided. Neither the Company nor the Trustee shall have the obligations to provide for operation, maintenance, repair and upkeep of the Common Properties once the funds provided by the annual assessment have been exhausted.
- (e) The Company shall have the right to convey title to the Common Properties and to assign its right and duties hereunder, provided that the transferee accepts such properties subject to the limitations and uses imposed hereby and affirmatively acknowledges its acceptance of the duties imposed here.
- (f) The Trustee or the Company shall have the power to dispose of the Common Properties free and clear of the limitations imposed hereby; provided, however, that such disposition shall first be approved in writing by fifty-one (51%) percent of the Owners of property within the Properties or in the alternative, shall be found to be in the best interest of the Owners of property within the Properties by the Superior Court of Aiken County, South Carolina. The proceeds of such a sale shall first be used for the payment of any debts or obligations constituting a lien on the Common Properties, then for the payment of any obligations incurred by the Trustee or the Company in the operation, maintenance, repair and upkeep of the Common Properties, then the remainder shall be distributed among the Owners of property within the Properties, exclusive of the Trustees, in a proportion equal to the portion that the maximum annual assessment on property owned by a particular Owner bears to the total maximum annual assessments for all property located within the Properties.

IN WITNESS WHEREOF, the Company has caused this instrument to be executed the day and year above written.

Signed, sealed and delivered

In the presence of:

Julie King
Witness

STORM BRANCH VENTURES LLC

BY: [Signature]

As Its Managing Member

Attest: [Signature]

As Its Secretary

Susan H. Erway
Notary Public, Columbia County,
Georgia



State of Georgia)

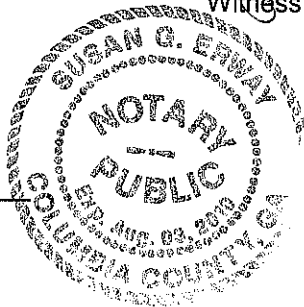
PROBATE

County of Columbia)

PERSONALLY appeared before me the undersigned witness, who is being duly sworn, says that (s)he saw the within-named Grantor sign, seal and deliver the within RESTRICTIONS; and that (s)he with the other whose signature appears above witnessed the execution thereof.
SWORN to before me (date) 03/27/2009.

Susan H. Erway (Seal)
Notary Public for Georgia

My Commission expires: Aug 3, 2010



Julie King
Witness

EXHIBIT A

All that tract or parcel of land situate, lying and being in the County of Aiken, South Carolina, containing a total of 153.17 acres, and being more particularly described by reference to a certain plat of The Retreat at Storm Branch, Section 1, prepared by Southern Partners, which is recorded in the RMC Office of Aiken County, South Carolina, in Plat ^{Book} ~~Cabinet~~ 54, ^{Page} ~~Slide~~ 475-481.

