

BK 42690PG0012

FILED & RECORDED  
CLERK SUPERIOR COURT  
CHAMBLEE COUNTY, GA.

05 MAY 10 AM 10:42

TOM LAWLER, CLERK

Condos: 25% max lease (2)  
bldg.  
305124

TH/SF - no restriction, but must have Board approval.

Upon recording return to:  
Lisa A. Crawford  
Dorough & Dorough, LLC  
Attorneys At Law  
Two Decatur TownCenter, Suite 520  
125 Clairemont Avenue  
Decatur, Georgia 30030-2551  
(404) 687-9977

---

MASTER DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR  
NORCROSS DOWNTOWN

---

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP OWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNERS' ASSOCIATION ACT, O.C.G.A. § 44-3-220, ET SEQ.

072256

146

MASTER DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS

FOR

NORCROSS DOWNTOWN

- TABLE OF CONTENTS -

	<u>Page Number</u>
<b>ARTICLE 1 DEFINITIONS</b> .....	<b>1</b>
1.1 "ARTICLES OF INCORPORATION" .....	2
1.2 "ASSOCIATION" .....	2
1.3 "BOARD OF DIRECTORS" OR "BOARD" .....	2
1.4 "BYLAWS" .....	2
1.5 "COMMON PROPERTY" .....	2
1.6 "COMMUNITY" .....	2
1.7 "COMMUNITY-WIDE STANDARD" .....	2
1.8 "CONDOMINIUM UNIT" .....	2
1.9 "DECLARANT" .....	3
1.10 "DETACHED UNIT" .....	3
1.11 "DEVELOPMENT PERIOD" .....	3
1.12 "MORTGAGE" .....	3
1.13 "MORTGAGEE" .....	3
1.14 "NEIGHBORHOOD" .....	3
1.15 "NEIGHBORHOOD ASSOCIATION" .....	3
1.16 "NEIGHBORHOOD DECLARATION" .....	3
1.17 "OCCUPANT" .....	4
1.18 "OWNER" .....	4
1.19 "PERSON" .....	4
1.20 "ROCK-TENN" .....	4
1.21 "ROCK-TENN PARCEL" .....	4
1.22 "SUPPLEMENTARY DECLARATION" .....	4
1.23 "TOTAL ASSOCIATION VOTE" .....	4
1.24 "TOWNHOME UNIT" .....	4
1.25 "UNIT" .....	5
<b>ARTICLE 2 PROPERTY SUBJECT TO THIS DECLARATION</b> .....	<b>5</b>
2.1 <u>PROPERTY HEREBY SUBJECTED TO THIS DECLARATION</u> .....	5
2.2 <u>UNILATERAL ANNEXATION BY DECLARANT</u> .....	5
2.3 <u>ADDITIONAL COVENANTS, RESTRICTIONS AND EASEMENTS</u> .....	5
2.4 <u>OTHER ANNEXATION</u> .....	6
2.5 <u>WITHDRAWAL OF PROPERTY</u> .....	6
<b>ARTICLE 3 ASSOCIATION MEMBERSHIP AND VOTING RIGHTS</b> .....	<b>6</b>
3.1 <u>MEMBERSHIP</u> .....	6
3.2 <u>VOTING</u> .....	7
3.3 <u>NOTICE OF SALE, LEASE OR ACQUISITION</u> .....	7

<b>ARTICLE 4 ASSESSMENTS</b> .....	<b>7</b>
4.1 <u>PURPOSE OF ASSESSMENTS</u> .....	7
4.2 <u>CREATION OF THE LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS</u> .....	7
4.3 <u>GENERAL ASSESSMENTS</u> .....	8
4.4 <u>TOWNHOME UNIT ASSESSMENTS</u> .....	8
4.5 <u>SPECIAL ASSESSMENTS</u> .....	8
4.6 <u>SPECIFIC ASSESSMENTS</u> .....	9
4.7 <u>SUBORDINATION OF LIENS TO MORTGAGES</u> .....	9
4.8 <u>REMEDIES OF THE ASSOCIATION</u> .....	9
4.9 <u>DATE OF COMMENCEMENT OF ASSESSMENTS</u> .....	10
4.10 <u>BUDGET DEFICITS DURING DECLARANT CONTROL</u> .....	10
4.11 <u>FAILURE TO ASSESS</u> .....	10
4.12 <u>ESTOPPEL LETTER</u> .....	10
4.13 <u>INITIATION FEE</u> .....	11
<b>ARTICLE 5 MAINTENANCE; COMMON PROPERTY</b> .....	<b>11</b>
5.1 <u>ASSOCIATION'S RESPONSIBILITY</u> .....	11
5.2 <u>OWNER'S RESPONSIBILITY</u> .....	11
5.3 <u>YARD MAINTENANCE</u> .....	12
5.4 <u>CONVEYANCE OF COMMON PROPERTY BY DECLARANT TO ASSOCIATION; NO IMPLIED RIGHTS</u> .....	12
5.5 <u>PARTY WALLS</u> .....	13
5.6 <u>PARTITION</u> .....	13
5.7 <u>CONDEMNATION</u> .....	13
5.8 <u>LIABILITY</u> .....	14
5.9 <u>GARBAGE COLLECTION</u> .....	14
5.10 <u>MASTER WATER METER</u> .....	14
<b>ARTICLE 6 ARCHITECTURAL STANDARDS</b> .....	<b>15</b>
6.1 <u>GENERAL</u> .....	15
6.2 <u>ROCK-TENN APPROVAL</u> .....	15
6.3 <u>GUIDELINES AND PROCEDURES</u> .....	16
6.4 <u>LIMITATION OF LIABILITY</u> .....	17
6.5 <u>NO WAIVER</u> .....	17
6.6 <u>VARIANCES</u> .....	17
6.7 <u>ENFORCEMENT</u> .....	18
6.8 <u>ARCHITECTURAL REVIEW COMMITTEE</u> .....	18
<b>ARTICLE 7 USE RESTRICTIONS AND RULES</b> .....	<b>19</b>
7.1 <u>RULES AND REGULATIONS</u> .....	19
7.2 <u>RESIDENTIAL USE</u> .....	19
7.3 <u>LEASING</u> .....	20
7.4 <u>SIGNS</u> .....	20
7.5 <u>VEHICLES; PARKING</u> .....	20
7.6 <u>ANIMALS AND PETS</u> .....	21
7.7 <u>NUISANCE</u> .....	21
7.8 <u>UNSIGHTLY OR UNKEMPT CONDITIONS</u> .....	22
7.9 <u>ANTENNAS</u> .....	22
7.10 <u>TREE REMOVAL</u> .....	22
7.11 <u>DRAINAGE</u> .....	22
7.12 <u>SIGHT DISTANCE AT INTERSECTIONS</u> .....	22
7.13 <u>GARBAGE CANS, WOODPILES, ETC.</u> .....	22
7.14 <u>SUBDIVISION OF UNITS</u> .....	23
7.15 <u>FIREARMS</u> .....	23
7.16 <u>FENCES</u> .....	23
7.17 <u>UTILITY LINES</u> .....	23

7.18	<u>AIR-CONDITIONING UNITS</u> .....	23
7.19	<u>LIGHTING</u> .....	23
7.20	<u>ARTIFICIAL VEGETATION, EXTERIOR SCULPTURE AND SIMILAR ITEMS</u> .....	24
7.21	<u>ENERGY CONSERVATION EQUIPMENT</u> .....	24
7.22	<u>SWIMMING POOLS</u> .....	24
7.23	<u>GARDENS, PLAY EQUIPMENT AND WATER FEATURES</u> .....	24
7.24	<u>MAILBOXES</u> .....	24
7.25	<u>CLOTHESLINES</u> .....	24
7.26	<u>ENTRY FEATURES</u> .....	24
7.27	<u>WINDOW TREATMENTS</u> .....	24
7.28	<u>OUTBUILDINGS AND SIMILAR STRUCTURES</u> .....	24
7.29	<u>TRAFFIC REGULATIONS</u> .....	25
<b>ARTICLE 8 <u>INSURANCE AND CASUALTY LOSSES</u></b> .....		<b>25</b>
8.1	<u>INSURANCE ON COMMON PROPERTY</u> .....	25
8.2	<u>INDIVIDUAL INSURANCE</u> .....	25
8.3	<u>DAMAGE AND DESTRUCTION -- INSURED BY ASSOCIATION</u> .....	26
8.4	<u>DAMAGE AND DESTRUCTION -- INSURED BY OWNERS</u> .....	26
<b>ARTICLE 9 <u>MORTGAGEE PROVISIONS</u></b> .....		<b>27</b>
9.1	<u>NOTICES OF ACTION</u> .....	27
9.2	<u>AUDIT</u> .....	27
9.3	<u>NO PRIORITY</u> .....	27
<b>ARTICLE 10 <u>EASEMENTS</u></b> .....		<b>27</b>
10.1	<u>GENERAL</u> .....	27
10.2	<u>EASEMENTS FOR USE AND ENJOYMENT</u> .....	27
10.3	<u>EASEMENTS FOR UTILITIES</u> .....	28
10.4	<u>EASEMENT FOR EMERGENCY ENTRY</u> .....	29
10.5	<u>EASEMENT FOR MAINTENANCE - ASSOCIATION</u> .....	29
10.6	<u>EASEMENT FOR MAINTENANCE - OWNER</u> .....	29
10.7	<u>EASEMENT FOR SIGNAGE, LIGHTING, LANDSCAPING AND SIMILAR ITEMS</u> .....	29
10.8	<u>EASEMENTS FOR ENCROACHMENT AND OVERHANG</u> .....	30
10.9	<u>EASEMENT FOR ENTRY FEATURES AND STREETSCAPES</u> .....	30
10.10	<u>EASEMENT FOR DRAINAGE</u> .....	30
10.11	<u>EASEMENT DURING CONSTRUCTION AND SALE PERIOD</u> .....	30
10.12	<u>EASEMENT FOR PRIVATE STREETS, ALLEYS, SIDEWALKS AND SIGNS</u> .....	31
<b>ARTICLE 11 <u>GENERAL PROVISIONS</u></b> .....		<b>31</b>
11.1	<u>ENFORCEMENT</u> .....	31
11.2	<u>OCCUPANTS BOUND</u> .....	32
11.3	<u>SELF-HELP</u> .....	32
11.4	<u>DURATION</u> .....	32
11.5	<u>TERMINATION OF RIGHTS OF DECLARANT</u> .....	32
11.6	<u>TERMINATION OF RIGHTS OF ROCK-TENN</u> .....	33
11.7	<u>ENFORCEMENT RIGHTS OF RIGHTS OF ROCK-TENN</u> .....	33
11.8	<u>LIABILITY OF ROCK-TENN</u> .....	33
11.9	<u>AMENDMENT</u> .....	33
11.10	<u>CHALLENGES TO AMENDMENT</u> .....	34
11.11	<u>GENDER AND GRAMMAR</u> .....	34
11.12	<u>SEVERABILITY</u> .....	34
11.13	<u>CAPTIONS</u> .....	34
11.14	<u>NO MERGER</u> .....	35
11.15	<u>PREPARER</u> .....	35
11.16	<u>NOTICES</u> .....	35
11.17	<u>PERPETUITIES</u> .....	35

11.18 NO DISCRIMINATION.....35  
11.19 INDEMNIFICATION.....35  
11.20 VARIANCES.....36  
11.21 LITIGATION.....36  
11.22 CUMULATIVE EFFECT; CONFLICT.....36  
11.23 SECURITY.....36

EXHIBIT "A" - PROPERTY DESCRIPTION

EXHIBIT "B" - ADDITIONAL PROPERTY WHICH MAY BE UNILATERALLY SUBMITTED TO THIS  
DECLARATION BY DECLARANT

EXHIBIT "C" - BYLAWS OF NORCROSS DOWNTOWN RESIDENTIAL ASSOCIATION, INC.

EXHIBIT "D" - PROPERTY DESCRIPTION – ROCK-TENN PARCEL

BK 42690PG0017

MASTER DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR  
NORCROSS DOWNTOWN

THIS DECLARATION is made on the date hereinafter set forth by **NORCROSS DOWNTOWN, LLC**, a Georgia limited liability company (hereinafter sometimes called "Declarant");

WITNESSETH

WHEREAS, Declarant is the owner, or if not the owner has the consent of the owner, of the real property described in Exhibit "A" hereof (the Community as defined herein); and

WHEREAS, Declarant desires to subject the real property described in Exhibit "A" hereof to the provisions of this Declaration to provide for a general plan for the subdivision, development and improvement of Norcross Downtown in an orderly manner with appropriate architectural, landscaping, construction, development and maintenance controls to maintain the value, aesthetic appearance and architectural harmony of Norcross Downtown during and after development;

NOW, THEREFORE, Declarant hereby declares that the real property described in Exhibit "A" attached hereto and by this reference incorporated herein is hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied, mortgaged and otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments and liens, hereinafter set forth, which are for protecting the value and desirability of and which shall run with the title to the real property hereby and hereafter made subject hereto and shall be binding on all persons having any right, title or interest in all or any portion of the real property now and hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title and assigns and shall inure to the benefit of each owner of all or any portion thereof.

Article 1  
Definitions

The following words, when used in this Declaration or in any Supplementary Declaration, shall have the following meanings:

1.1 "Articles of Incorporation" means the Articles of Incorporation of Norcross Downtown Residential Association, Inc., filed with the Georgia Secretary of State and incorporated herein by this reference as may be amended from time to time.

1.2 "Association" means Norcross Downtown Residential Association, Inc., a Georgia nonprofit corporation, its successors and assigns.

1.3 "Board of Directors" or "Board" means the appointed or elected body of the Association, vested with the authority to manage the affairs of the Association under the Georgia Nonprofit Corporation Code, O.C.G.A. Section 14-3-101, *et seq.*

1.4 "Bylaws" means the Bylaws of Norcross Downtown Residential Association, Inc., attached to this Declaration as Exhibit "C" and incorporated herein by this reference as may be amended from time to time.

1.5 "Common Property" means any and all real and personal property, including, without limitation, easements and other interests therein, and the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners.

1.6 "Community" refers to that certain real property described in Exhibit "A", attached hereto, and such additions thereto as may be made by Supplementary Declaration as provided herein.

1.7 "Community-Wide Standard" shall (i) with respect to the maintenance in the Community, mean a first class standard of maintenance and care designed to ensure that the Community retains an attractive appearance consistent with how the Community looked upon the completion of all work shown on the plans for the Community approved by Rock-Tenn, and free of conditions which are visibly deteriorated or in obvious need of repair; and (ii) with respect to conduct or other activity, mean the standard of conduct or other activity generally prevailing in the Community; provided, however, during the Development Period, "Community Wide-Standard" shall be interpreted to mean the generally prevailing standard of maintenance consistent with similar projects in the local area during the development, construction, and build-out phase of a particular project. Such standard may be more specifically determined by the Board of Directors of the Association. Such determination, however, must be consistent with the Community-Wide Standard originally established by the Declarant.

1.8 "Condominium Unit" shall mean any portion of the Community which may be independently owned and conveyed for occupancy and which constitutes or will constitute, after the recording of a declaration of condominium, a unit as defined in a declaration of condominium. The ownership of each Condominium Unit shall include an appurtenant interest in the common elements of the condominium. The ownership of each Condominium Unit shall include, and there shall automatically pass with the title to each Condominium Unit as an appurtenance thereto, whether or not separately described, membership in the Association and all of the rights and interest of an Owner in the Common Property, as herein provided.

1.9 "Declarant" means NORCROSS DOWNTOWN, LLC, a Georgia limited liability company, and its successors-in-title and assigns; provided that in a recorded instrument, such successor-in-title or assignee is designated as the Declarant hereunder by the holder of all of the rights of Declarant hereunder; and, provided, further, upon the effective date of the designation of a successor Declarant, all rights of the former Declarant in and to such status as Declarant hereunder shall cease, it being understood that there shall be only one holder of the rights of Declarant hereunder at any one point in time.

1.10 "Detached Unit" means any plot of land within the Community, whether or not improvements are constructed thereon, which constitutes a single-family dwelling site, which dwellings will not be attached by one or more party walls to another dwelling, as shown on a plat recorded in the Office of the Clerk of Superior Court of Gwinnett County, Georgia. The ownership of each Detached Unit shall include, and there shall automatically pass with the title to each Detached Unit as an appurtenance thereto membership in the Association and all rights and interest of an Owner in the Common Property.

1.11 "Development Period" means that period of time commencing with the date of recording of this Declaration in the Office of the Clerk of Superior Court of Gwinnett County, Georgia and ending on the date that certificate of occupancy has been issued for a dwelling on every Unit planned by Declarant to be part of the Community.

1.12 "Mortgage" means any and all instruments used for the purpose of encumbering or conveying title to real property in the Community as security for the payment or satisfaction of an obligation, including, without limitation, any mortgage, deed to secure debt or deed of trust.

1.13 "Mortgagee" means the holder of a Mortgage.

1.14 "Neighborhood" means each separately developed and denominated area within the Community which has been so designated on Exhibit "A" hereof or in one or more Supplementary Declarations. By way of illustration and not limitation, a townhouse development, single-family detached housing development or condominium development might each be designated as a separate Neighborhood. The Declarant shall have the right to designate separate Neighborhood status and change the Neighborhood status of any previously designated Neighborhood for any property in the Community. A Neighborhood may (but is not required to) have a separate incorporated mandatory membership Neighborhood Association.

1.15 "Neighborhood Association" means a condominium association, homeowners association or other mandatory membership owners association having concurrent jurisdiction with the Association over any Neighborhood.

1.16 "Neighborhood Declaration" shall refer to any declaration of condominium, declaration of protective covenants or similar instrument recorded in the Gwinnett County, Georgia land records which subjects all or a portion of the land within such Neighborhood to covenants, restrictions, and easements in addition to those contained in this Declaration.



1.17 "Occupant" means any Person occupying all or any portion of a Unit or other property located within the Community for any period of time, regardless of whether such Person is a tenant of the Owner of such property.

1.18 "Owner" means the record owner, whether one or more Persons, of the fee simple title to any Unit within the Community but does not include any Mortgagee.

1.19 "Person" includes any individual, individual acting in a fiduciary capacity, corporation, limited partnership, limited liability company, general partnership, joint stock company, joint venture, association, company or other organization, recognized as a separate legal entity under Georgia law.

1.20 "Rock-Tenn" means Rock-Tenn Shared Services, LLC, as the record title owner of the Rock-Tenn Parcel, or any company, affiliate, venture or partnership in which the Rock-Tenn Company is a majority owner.

1.21 "Rock-Tenn Parcel" means all that tract or parcel of land lying and being in Land Lots 243 and 244 of the 6th District, City of Norcross, Gwinnett County, Georgia being the separately developed commercial area lying adjacent to the Community as more particularly described on Exhibit "D" attached hereto and by this reference incorporated herein.

1.22 "Supplementary Declaration" means an amendment or supplement to this Declaration which subjects additional property to this Declaration and/or imposes additional covenants, conditions, restrictions or easements on the land described therein.

1.23 "Total Association Vote" means the votes attributable to the entire membership of the Association as of the record date for such action (including votes of the Declarant), whether or not such members are present or represented at the meeting, if any, where such votes are to be cast. If, for example, and without limitation, a majority of the Total Association Vote is required to approve a matter, such matter must receive more than half of the votes attributable to all existing members of the Association as of the record date for such action, whether or not such members are present or represented at the meeting, if any, where such votes are to be cast. As a further illustration, if a majority vote is required to approve a matter (and the term Total Association Vote is not used), such matter must receive more than half of the votes cast by the members present and entitled to vote on the matter.

1.24 "Townhome Unit" shall mean any plot of land within the Community, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single dwelling site for a townhome which will be attached by one or more party walls to another townhome. Where the dwelling on a Townhome Unit is attached by a party wall to one or more other dwellings, the boundary between Townhome Units shall be a line running along the center of the party wall separating the Townhome Units. The ownership of each Townhome Unit shall include, and there shall automatically pass with the title to each Townhome Unit as an appurtenance thereto, whether or not separately described, membership in the Association and all of the rights and interest of an Owner in the Common Property, as herein provided.

1.25 "Unit" shall mean a separate portion of the Community which may be independently owned and conveyed, including, without limitation a Condominium Unit, Townhome Unit or a Detached Unit.

Article 2  
Property Subject To This Declaration

2.1 Property Hereby Subjected To This Declaration. The real property which is, by the recording of this Declaration, subject to the covenants, conditions, restrictions and easements hereinafter set forth and which, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied and encumbered subject to this Declaration is the real property described in Exhibit "A" attached hereto and by this reference made a part hereof.

2.2 Unilateral Annexation By Declarant. As the owner thereof or, if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option from time to time at any time until ten (10) years after the recording of this Declaration to subject all or any portion of the real property described in Exhibit "B" attached hereto and by this reference incorporated herein, to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the Office of the Clerk of Superior Court of Gwinnett County, Georgia a Supplementary Declaration describing the property being subjected. Declarant intends to annex hereto the property contained in Declarant's land plan for the development as amended from time to time which property is a portion of the property described in Exhibit "B". However, inclusion of property on Declarant's land plan or in Exhibit "B" shall not obligate the Declarant to subject such property to the Declaration, nor shall exclusion of property from the initial land plan bar Declarant from subjecting such property to the Declaration. Any annexation shall be effective upon the filing for record of a Supplementary Declaration executed by the Declarant unless a later effective date is provided therein. As long as covenants applicable to the real property previously subjected to this Declaration are not changed and as long as rights of existing Owners are not adversely affected, the Declarant may unilaterally amend this Declaration to reflect the different character of any such annexed real property. If any land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

2.3 Additional Covenants, Restrictions and Easements. The Declarant may unilaterally subject any portion of the property submitted to this Declaration initially or by Supplementary Declaration to additional covenants, restrictions and easements. Such additional covenants, conditions, restrictions and easements may be set forth in a Supplementary Declaration or a separate declaration of protective covenants, declaration of condominium or other document filed either concurrently with or after the annexation of the subject property. Any such document filed by the Declarant may supplement the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property. Notwithstanding anything to the contrary contained herein, this Declaration shall be superior to

any Supplementary Declaration filed by the Declarant, and such Supplementary Declaration shall not amend, create exceptions to, modify or delete any of the provisions contained herein. No Person shall record any declaration of covenants, conditions and restrictions, declaration of condominium, easements, or similar instrument without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Gwinnett County, Georgia land records. No such instrument recorded by any Person, other than the Declarant pursuant to this section, may conflict with the Declaration, By-Laws or Articles. In addition, the Declarant, with the consent of Rock Tenn, may modify the applicability of the covenants, restrictions and easements contained in this Declaration as to the property subjected to the provisions hereof.

2.4 Other Annexation. Upon the written consent of: (a) the owner(s) thereof; (b) the Declarant; and (c) the Owners of at least two-thirds (2/3) of the Units, the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the Office of the Clerk of Superior Court of Gwinnett County, Georgia a Supplementary Declaration describing the property being annexed. Any such Supplementary Declaration shall be executed on behalf of the Association by the President of the Association whose signature shall be attested by the Secretary of the Association. The annexation shall be effective only upon the filing for record of such Supplementary Declaration, unless a later effective date is provided therein.

2.5 Withdrawal of Property. Declarant, with the prior written consent of Rock-Tenn, shall have the right to amend this Declaration so long as it has a right to annex additional property pursuant to this Article for the purpose of removing any portion of the Community then owned by Declarant or the Association from the coverage of this Declaration, to the extent originally included in error or for the purpose of dedicating such property to the City of Norcross to be used as a public park or as a result of any changes whatsoever in the plans for the Community, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Community. Any such withdrawal shall be accomplished by the filing for record of an amendment to this Declaration describing the property removed and shall be effective upon filing for record in the Office of the Clerk of Superior Court of Gwinnett County, Georgia unless a later effective date is provided therein. Such amendment shall be executed by the Declarant and the Owner(s) of the property being removed and shall not require the vote or consent of any other Person, except Rock-Tenn.

### Article 3

#### Association Membership and Voting Rights

3.1 Membership. Every Person who is the record owner of a fee or undivided fee interest in any Unit subject to this Declaration shall have a membership in the Association. The foregoing is not intended to include Mortgagees and the conveyance of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one membership per Unit. Membership shall be appurtenant to and may not be separated from ownership of a Unit. The rights and privileges of membership, including the right to hold office, may be exercised by a member or the designee of a member, but in no event

shall more than one office be held for each Unit owned. This Section is not intended to prohibit the same individual from being both an officer and a director of the Association. Nothing in this Section shall restrict the number of votes cast or the number of the officers and directors appointed by the Declarant.

3.2 Voting. Members shall be entitled to one vote for each Unit owned. When more than one Person holds an ownership interest in a Unit, the vote for such Unit shall be exercised as those Owners themselves determine and advise the Secretary prior to any meeting or referendum. The vote attributable to a Unit shall be suspended in the event more than one Person seeks to exercise it. The Board of Directors may suspend the voting rights of any Owner for any period during which any past due assessment against any Unit of the Owner remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, Bylaws or rules and regulations.

3.3 Notice of Sale, Lease or Acquisition. Prior to the sale or lease of a Unit, the Owner shall provide the Association with written notice of the name of the purchaser or lessee, as the case may be, and such other information as the Board may reasonably require. Upon acquisition of a Unit each new Owner shall provide the Association with written notice of the name and mailing address of the Owner and such other information as the Board may reasonably require.

Article 4  
Assessments

4.1 Purpose of Assessments. The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners of Units, including, without limitation, the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

4.2 Creation of the Lien and Personal Obligation for Assessments. Each Owner of a Unit by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) general assessments; (b) Townhome Unit Assessments, if applicable; (c) special assessments; and (d) specific assessments. All such assessments, together with late charges, interest (at a rate set by the Board of Directors from time to time, but not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum on the principal amount due) and costs of collection, including, without limitation, reasonable attorney's fees actually incurred, shall, from the time the sums become due and payable, be a charge on the land and shall be a continuing lien in favor of the Association on the Unit against which each assessment is made. The recording of this Declaration shall constitute record notice of the existence of the lien and no further recordation of any claim of lien shall be required. Each such assessment, together with such late charges, interest and costs, shall also be the personal obligation of the Person who was the Owner of the Unit at the time the assessment fell due. Each Owner shall be personally liable for the portion of each assessment coming due while the Owner of a Unit and each grantee of an Owner shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of the grantor shall not

apply to any first Mortgagee taking title through foreclosure proceedings. No Owner may waive or otherwise exempt themselves from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the property. No diminution or abatement of any assessment shall be claimed or allowed by reason of any failure of the Association to take some action or perform some function required to be taken or performed by the Association, the obligation to pay assessments being a separate and independent covenant on the part of each Owner. All payments shall be applied first to costs, then to late charges, then to interest and then to delinquent assessments.

4.3 General Assessments. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year. The general assessment to be levied against each Unit shall be an equal amount for all Units. The Board shall cause the budget and the assessments to be levied for the year to be delivered to each member at least thirty (30) days prior to the due date of any general assessment. The budget and the general assessment shall become effective unless disapproved at a meeting by a majority of the Total Association Vote and the Declarant. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for any period, then and until such time as a budget shall have been determined, as provided herein, the budget in effect shall continue. General assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors, which may include, without limitation, acceleration, upon ten (10) days' written notice for delinquents. Unless otherwise provided by the Board, the general assessment shall be paid in one annual installment. General assessments include any sums the Board determines necessary for the continued ownership, operation and maintenance of the Common Property, operating expenses of the Association, payment for any items of betterment and the establishment of reserve funds as the Board shall deem proper. General assessments may include, without limitation, sums for property taxes, insurance premiums, legal and accounting fees, management fees, charges for utilities, cleaning and janitor services, landscape maintenance, reserves for improvements to the Common Property, expenses and liabilities incurred as provided herein and in the Articles of Incorporation and Bylaws for indemnification of officers and directors and in connection with the enforcement of rights and duties of the Association against Owners and others.

4.4 Townhome Unit Assessments. The Association may levy assessments against Townhome Units in the Community to fund actual and estimated expenses incurred by the Association for the primary benefit of said Townhome Units including without limitation, maintenance required to be performed by the Association with respect to Townhome Units as may be provided herein or in any Supplementary Declaration. Townhome Unit Assessments may be levied as specifically budgeted from time to time by the Board of Directors pursuant to this Declaration or any Supplementary Declaration. In addition, the Board shall levy a Townhome Unit Assessment upon the request of the Owners holding two-thirds (2/3) of the Total Association Vote applicable to all Townhome Units within the Community.

4.5 Special Assessments. The Association may levy a special assessment if approved by two-thirds (2/3) of the Total Association Vote and the Declarant. Special assessments shall be paid as determined by the Board. The Board may permit a special assessment to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

4.6 Specific Assessments. The Board shall have the power to levy specific assessments as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. Fines levied pursuant to this Declaration and the costs of maintenance performed by the Association for which the Owner is responsible shall be specific assessments. The Board of Directors may also specifically assess Owners for Association expenses as follows: (a) expenses of the Association which benefit less than all of the Units may be specifically assessed equitably among all of the Units which are benefited according to the benefit received; and (b) expenses of the Association which benefit all Units, but which do not provide an equal benefit to all Units, may be assessed equitably among all Units according to the benefit received.

4.7 Subordination of Liens to Mortgages. The lien of all assessments authorized herein is hereby made subordinate to the lien of any first Mortgage if, but only if, all assessments and charges with respect to such Unit authorized herein having a due date on or prior to the date of the Mortgage as filed of record have been paid. The lien hereby subordinated is only such lien as relates to assessments and charges authorized hereunder having a due date subsequent to the date such Mortgage is filed of record and prior to the satisfaction, cancellation or foreclosure of such Mortgage or the sale or transfer of the property pursuant to any proceeding in lieu of foreclosure or the sale or transfer of the property pursuant to a sale under power contained in such Mortgage. Such subordination is merely a subordination and shall not relieve an Owner of the personal obligation to pay all assessments coming due during such period of ownership; shall not relieve such property from the lien provided for herein (except to the extent a subordinated lien is extinguished as a result of such subordination as against a Mortgagee or such Mortgagee's assignee or transferee by foreclosure or by sale under power); and no sale or transfer of such property to the Mortgagee or to any other Person pursuant to a decree of foreclosure, or pursuant to any other proceeding in lieu of foreclosure or pursuant to a sale under power, shall relieve any existing or previous Owner of any personal obligation or relieve such property or the then Owner from liability for any assessment authorized hereunder become due after such sale and transfer.

4.8 Remedies of the Association. Any assessments or installments thereof which are not paid when due shall be delinquent. In addition to the lien rights, the personal obligation of the then Owner to pay such assessments shall remain such Owner's personal obligation and shall also pass to such Owner's successors-in-title. Such Owner shall nevertheless remain as fully obligated as before to pay to the Association any and all amounts which such Owner was obligated to pay immediately preceding the transfer; and such Owner and such successors-in-title shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such Owner and such successors-in-title creating any indemnification of the Owner or any relationship of principal and surety as between themselves. Any assessment or installment thereof delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may from time to time determine. The Association may cause a notice of delinquency to be given to any Owner who has not paid within ten (10) days following the due date. In the event that the assessment remains unpaid after sixty (60) days, the Association may

institute suit to collect such amounts and/or to foreclose its lien. The Association may file a notice of its claim of lien with the Office of the Clerk of Superior Court of Gwinnett County, Georgia, but no such claim of lien shall be required to establish or perfect the lien for unpaid assessments contained in this Declaration. Each Owner, by acceptance of a deed, vests in the Association the right and power to bring all actions against such Owner personally for the collection of such charges as a debt or to foreclose the lien. The lien provided for in this Declaration shall be in favor of the Association and shall be for the benefit of all Owners. The Association shall have the power to bid on any property within the Community at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. The Association may also suspend the membership rights of the delinquent Owner, including the right to vote, the right of enjoyment in and to the Common Property maintained by the Association and the right to receive and enjoy such servicing and other benefits as may then be provided by the Association. Any such suspension shall not affect such member's obligation to pay assessments coming due during the period of such suspension and shall not affect the permanent lien on such property in favor of the Association.

4.9 Date of Commencement of Assessments. Assessments shall commence in general when the Board of Directors first determines a budget and levies assessments. The assessments provided for herein shall commence as to a particular Unit on the date that the Unit is first occupied; or is conveyed by Declarant to an owner who is not a successor Declarant or a builder acquiring the Unit for resale during the ordinary course of business. A Unit shall be occupied when it has been improved with a structure and has been conveyed to an Owner who intends to occupy and use the structure as a residence, or, if the structure is occupied as a residence before such conveyance, the date of such occupancy.

4.10 Budget Deficits During Declarant Control. For so long as the Declarant has the authority to appoint the directors and officers of the Association, Declarant may: (a) advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for capital reserves), and the sum of the general, Townhome Unit Assessment (if any), special and specific assessments collected by the Association in any fiscal year (such advances shall be evidenced by promissory notes from the Association in favor of the Declarant) or (b) cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for similar loans in the local area of the Community. No Mortgage secured by the Common Property or any of the improvements maintained by the Association shall be given in connection with such loan.

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

4.12 Estoppel Letter. The Association shall, within five (5) days after receiving a written request therefore and for a reasonable charge, as established by the Board, certify to the amount of any unpaid assessments constituting a lien on a specified Unit. A certification letter signed by

an officer of the Association or the Association's managing agent, if any, as to the amount of assessments due with respect to a Unit shall be binding upon the Association.

4.13 Initiation Fee. Upon the sale of each and every Unit after it has been improved with a structure for which a certificate of occupancy has been issued, an initiation fee in the amount of Seven Hundred and Fifty and No/100 Dollars (\$750.00) shall be collected from the purchaser at the closing of such sale for the benefit of the Association. The initiation fee shall constitute a specific assessment against the Unit, shall be in addition to, not in lieu of, the annual general assessment and shall not be considered an advance payment of such assessment. The initiation fee may be used by the Association for any purpose, including, without limitation, for the payment of operating expenses of the Association and other expenses incurred by the Association pursuant to the provisions of this Declaration.

#### Article 5

#### Maintenance; Common Property

5.1 Association's Responsibility. The Association shall maintain and keep in good repair the Common Property. The Association shall also maintain (whether or not constituting Common Property): (a) Community entry features, if any, including entry area landscaping and any irrigation system and the expenses for water and electricity, if any, provided to all such entry features; (b) all storm water detention/retention ponds and storm water drainage facilities serving the Community, if and to the extent such facilities are not maintained by the owner of such facilities, the owners of nearby property served by such facilities or a government body; (c) all Community parks, greenbelt and open spaces and any irrigation system and the expenses for water and electricity, if any, provided to all such greenbelt and open spaces to the extent the same are not maintained by a Neighborhood Association as provided in a Neighborhood Declaration, if any; (d) landscaping and yards located on the outside of a dwelling on a Unit as provided in Section 5.3 hereof; (e) recreational facilities and amenities serving the Community, if any; and (f) private streets and alleys in the Community. In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether within or without the Community and to enter into easements and covenant to share costs agreements regarding such property where the Board has determined that such action would benefit the Owners. In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, or the Occupants, family, guests, lessees or invitees of an Owner, then the Association may perform such maintenance, repair or replacement and all costs thereof, not paid for by insurance, shall be assessed against the Owner as a specific assessment. All maintenance by the Association shall be performed consistent with the Community-Wide Standard. Any common irrigation system installed by the Declarant or the Association shall be Common Property, operated, maintained, repaired and replaced by the Association. The deed of conveyance of any Unit shall not include any right, title or interest in such irrigation system, if any.

5.2 Owner's Responsibility. Except for maintenance performed on a Unit by the Association pursuant to Section 5.1 or 5.3, respectively, or in any Supplementary Declaration applicable to a Townhome Unit, or maintenance performed by a Neighborhood Association



pursuant to a Neighborhood Declaration, if any, all maintenance of the Unit and all structures, landscaping, and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Unit in a manner consistent with the Community-Wide Standard and this Declaration. Such maintenance obligation shall include, without limitation, the following: prompt removal of all litter, trash, refuse, and waste; keeping improvements, and exterior lighting in good repair and working order; keeping driveways in good repair; complying with all governmental health and police requirements; and repair of exterior damage to improvements including, without limitation, repairing and painting (or other appropriate external care) of improvements located on a Unit; provided, however, during the Development Period, Declarant shall maintain a Unit and the Community in a manner consistent with the Community-Wide Standard as defined in Section 1.7 herein without regard to any particular maintenance obligation specifically described above. In the event that the Board of Directors determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair or replacement of items for which such Owner is responsible hereunder, the Association shall, except in an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair or replacement, or, in the event that such maintenance, repair or replacement is not capable of completion within a ten-day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair or replacement and all costs thereof shall be assessed against the Owner and the Unit as a specific assessment.

5.3 Yard Maintenance. As provided in Section 5.1 above, the Association shall maintain and keep in good repair the landscaping improvements and lawns outside a dwelling located on a Unit, notwithstanding the landscaping improvements which may be added or installed by an Owner which are the responsibility of a Unit Owner. Such maintenance obligation shall include the following: lawn mowing and edging on a regular basis; tree and shrub pruning; and, in general, keeping each Unit's lawn attractive. The Board of Directors, with the consent of Rock-Tenn, may leave portions of the Community as undisturbed natural areas and may change the landscaping in the Community at any time and from time to time or may, with the consent of the Declarant and Rock-Tenn, change the level of yard maintenance performed or, for example, maintain front yards only. Any common irrigation system installed by the Declarant or the Association shall be Common Property operated, maintained, repaired and replaced by the Association. The deed of conveyance of any Unit shall not include any right, title or interest in such irrigation system, if any. The Board of Directors may promulgate rules setting forth the extent of landscaping maintenance to be performed on Units and the rights of Owners with respect to adding or modifying landscaping improvements on such Units, including, for example, allowing seasonal flowering plants in certain areas of Units at the expense of the Owner.

5.4 Conveyance of Common Property by Declarant to Association; No Implied Rights. Declarant may transfer or convey to the Association at any time and from time to time any personal property and any interest in improved or unimproved real property. Such conveyance shall be deemed to be accepted by the Association upon delivery of any personal property or

upon recordation of an instrument of conveyance of any interest in real property, and the property shall thereafter be Common Property to be used and maintained by the Association for the benefit of its members. The Association hereby constitutes and appoints Declarant as its agent and attorney-in-fact to accept on behalf of the Association any such conveyance to the Association and to execute on behalf of the Association any and all documents, including, without limitation, deeds and transfer tax declaration forms, necessary or convenient to effectuate and document any such conveyance to the Association. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise. The Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section and shall have no duty or obligation to convey any property or property rights to the Association regardless of whether or not any such property has been made available for the use of Owners. The Declarant may reserve, by lease, license, easement or otherwise such rights of use and enjoyment in and to all or any portion of the property so conveyed as Declarant may reasonably require so long as such reservation is not materially inconsistent with the overall scheme of development for the Community. Neither the recordation of any subdivision plat nor the use by the Owners or maintenance by the Association of any property shall create any rights, easements or licenses, in the Association or the Owners, express or implied, unless and until any such property rights, easements or licenses are conveyed by the Declarant, or the owner of such property to the Association or the Owners, as the case may be, by an instrument recorded in the Office of the Clerk of Superior Court of Gwinnett County, Georgia.

**5.5 Party Walls.** Each wall or fence whether built as part of the original construction of the Units or added pursuant to Article 6 hereof which shall serve and separate any two (2) adjoining Units shall constitute a party wall or fence and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto. The cost of reasonable repair and maintenance of a party wall or fence shall be shared by the Owners who make use of the wall or fence in equal proportions. If a party wall or fence is destroyed or damaged by fire or other casualty, then any Owner who has benefited by the wall or fence may restore it, and the other Owner who is benefited by the wall or fence shall contribute one-half of the cost of restoration, without prejudice, however, to the right of any Owner to call for a larger contribution from any other Owner under any rule of law regarding liability for negligent or willful acts or omissions.

**5.6 Partition.** The Common Property shall remain undivided and no Owner shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Community and without the written consent of all holders of all Mortgages encumbering any portion of the property, including, but not limited to, the Units located within the Community.

**5.7 Condemnation.** In the event of a taking by eminent domain of any portion of the Common Property on which improvements have been constructed, the Association shall restore or replace such improvements so taken on the remaining Common Property, unless within sixty (60) days after such taking, an alternative plan is approved by at least seventy-five percent (75%) of the Total Association Vote and the consent of the Declarant. The provisions of this

Declaration applicable to replacement or restoration of damaged improvements on the Common Property shall also apply to and govern the actions to be taken in the event that the improvements are not restored or replaced after a condemnation.

5.8 Liability. Owners, Occupants and their guests shall use the Common Property, Community recreational facilities, green space, pedestrian paths and walking trails maintained by the Association at their own risk and shall assume sole responsibility for their personal belongings used or stored there. The Association, the Declarant and their respective officers, directors, employees, representatives and agents shall not be held liable for personal injury to any person, nor for loss or damage to personal belongings used or stored on any of the foregoing property. The Association shall not be liable for injury or damage to any Person or property (a) caused by the elements or by an Owner or any other Person, (b) resulting from any rain or other surface water which may leak or flow from any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, or (c) caused by any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, becoming out of repair. Nor shall the Association be liable to any Owner or Occupant for loss or damage, by theft or otherwise, of any property of such Owner or Occupant.

5.9 Garbage Collection. The Association may, but shall not be required to, contract with a private trash collection company to pick up all usual and customary household trash on a regular basis. Trash and recycling receptacles shall be placed at the curb no earlier than 7:00 p.m. the day before pick up and shall be removed within twenty-four (24) hours. Garbage collection shall also be subject to such reasonable rules and regulations as the Board of Directors may adopt. All charges for usual and customary garbage collection shall be assessed to each Unit equally as part of the general assessment in accordance with Section 4.3 hereof.

5.10 Master Water Meter. The Association shall be responsible for the administration of expenses associated with the master water meter located within the Community, if any. The Association shall pay all usage charges for water supplied to the Community through the master water meter, if any. In the event each Unit is served by a submeter which allows the Association to determine the water usage attributable to a particular Unit, the Board of Directors may specifically assess each Unit for its share of water usage as a Townhome Unit Assessment or a specific assessment in accordance with Sections 4.4 and 4.5, respectively. The specific assessment for water usage for each Unit shall be determined by the Board of Directors and may be based on the number of gallons used and supplied to each Unit. In the event each Unit is not served by a submeter, the expenses associated with water usage in the Community may be assessed as part of the annual assessment and allocated equitably among all of the Units or may be calculated by using estimates based on averages or other techniques; so long as the same method is used for each Unit which benefits from water provided to the Community through the master water meter.

Article 6  
Architectural Standards

6.1 General. No exterior construction, alteration or addition of any improvements of any nature whatsoever (including, without limitation, staking, clearing, excavation, grading, filling, construction of impervious surface, building, exterior alteration of existing improvements, change in the exterior color of any existing improvement, and planting and removal of landscaping materials), shall be commenced or placed upon any part of the Community unless installed by the Declarant or an affiliate of the Declarant, approved in accordance with this Article, or otherwise expressly permitted under this Declaration. Any Owner may remodel, paint or redecorate the interior of structures on the Unit without approval hereunder. However, modifications to the interior of porches, patios and similar portions of a structure visible from outside the Unit shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. This Article shall not apply to the activities of the Declarant, affiliates of the Declarant, nor to improvements to the Common Property by or on behalf of the Association. This Article may not be amended without the written consent of the Declarant until (a) the Declarant no longer has the right to unilaterally annex additional property to the Community; and (b) each Unit has been improved with a structure for which a certificate of occupancy has been issued.

6.2 Rock-Tenn Approval. Rock-Tenn sold the property comprising the Community to Declarant. The corporate headquarters of Rock-Tenn is located on the Rock-Tenn Parcel. Declarant and Rock-Tenn agree and acknowledge that Rock-Tenn has a strong interest in maintaining the value of the Rock-Tenn Parcel and that portions of this Declaration are intended to give Rock-Tenn full and complete authority to approve all architectural changes in the Community in order to ensure that the Community is developed and maintained in a first class condition. Any exterior construction, alteration or addition of any improvements of any nature whatsoever (including, without limitation, staking, clearing, excavation, grading, filling, construction of impervious surfaces, building, exterior alteration of existing improvements, change in the exterior color of any existing improvement, and planting and removal of landscaping materials), previously submitted to and approved by the Declarant or the ARC, as the case may be, pursuant to the provisions of Article 6 hereof, must also be approved in writing by Rock-Tenn as provided herein; provided, however, in the event an Owner fails to submit plans and specification to the Declarant or the ARC, as provided herein, nothing herein shall be construed as relieving said Owner from its obligation to submit the same to Rock-Tenn for approval. The Final Development Plan as defined in that certain Lot/Land Purchase and Sale Agreement by and between Hedgewood Development, LLC and Rock-Tenn Converting Co, dated June 21, 2004, including, without limitation, all architectural plans and specifications, and landscape design has not been approved by Rock-Tenn pursuant to said agreement. Once approved by Rock-Tenn as provided in said agreement, the Final Development Plan shall not require further approval by Rock-Tenn except for modifications to the Final Development Plan as provided herein. Any Owner may remodel, paint or redecorate the interior of structures on the Unit without approval hereunder. However, modifications to the interior of porches, patios and similar portions of a structure visible from outside the Unit shall be subject to approval by Rock-Tenn. No approval shall be required to repaint the exterior of a structure in accordance with the

originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. This Article may not be amended without the prior written consent of Rock-Tenn until the right of Rock-Tenn to take action and approve plans and specifications pursuant to Article 6 of this Declaration terminates as provided in Section 11.6 hereof.

**6.3 Guidelines and Procedures.** Except as provided above, no exterior construction, addition or alteration shall be made unless and until plans and specifications shall have been submitted in writing to and approved by the Declarant and, after said approval by Declarant, by Rock-Tenn. In the event Declarant disapproves of the plans and specifications for any proposed exterior construction, addition or alteration, Rock-Tenn shall not be required to review said plans and specifications and the same shall be deemed automatically denied by Rock-Tenn. Such plans and specifications shall be of sufficient detail to allow the Declarant and Rock-Tenn, respectively, to make its review and, to the extent required by the Declarant or Rock-Tenn, as the case may be, shall show the nature, kind, shape, height, materials and location of the proposed improvement. Consistent with this Declaration, the Declarant may adopt separate written design and development guidelines and application and review procedures, which may provide for a review fee. Consistent with this Declaration, the Declarant shall have sole and full authority to prepare and to amend, from time to time at its sole discretion and without notice, its architectural guidelines. The Declarant shall make the architectural guidelines, if any, available to Owners and builders who seek to engage in construction upon all or any portion of the Community and such Owners and builders shall conduct their operations strictly in accordance therewith. If the Declarant fails to approve or to disapprove submitted plans and specifications within thirty (30) days after receipt of all required plans and specifications, such approval shall be deemed to have been given. Upon approval of submitted plans and specifications by Declarant, either by written approval or approval deemed to have been given due to the expiration of said thirty (30) day period, Owners shall submit plans and specifications to the Designated Representative for Rock-Tenn, as defined herein and Rock-Tenn shall be represented by the Designated Representative in all matters with respect to their approval rights hereunder. If Rock-Tenn fails to approve or to disapprove plans and specifications submitted to the Designated Representative for Rock-Tenn within fifteen (15) days after receipt of all required plans and specifications, such approval shall be deemed to have been given. Until a subsequent designation by Rock-Tenn, the Director of Risk Management for the Rock-Tenn Company shall be the "Designated Representative" for Rock-Tenn. Any request, demand, delivery for approval or other communication required of, or permitted to, Rock-Tenn shall be deemed to have been duly given or made if delivered to the Designated Representative at the Rock-Tenn Company, 504 Thrasher Street, Norcross, Georgia 30071, and any determination, decision, authorization, consent, approval, action or inaction by, and the execution of any document on behalf of Rock-Tenn by the Designated Representative, shall be binding upon Rock-Tenn. A different address or Designated Representative may be specified, from time to time, by written notice to the Declarant or, upon the expiration or earlier surrender of Declarant's right to take action pursuant to Section 6.7, to the Association, at the address of the registered agent of the Declarant or the Association, respectively, as listed with the Georgia Secretary of State. As a condition of approval under this Article, each Owner, on behalf of such Owner and such Owner's successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance to and on any improvement, change, modification, addition or alteration. In the discretion of the Declarant and Rock-Tenn, respectively, an Owner may be required to verify such condition of approval by a recordable written instrument acknowledged

by such Owner on behalf of such Owner and such Owner's successors-in-interest. The Declarant and Rock-Tenn, respectively, shall be the arbiters of such plans and may withhold approval for any reason, including, without limitation, purely aesthetic considerations, and either party shall be entitled to stop any construction in violation of these restrictions. The Declarant and Rock-Tenn, as the case may be, and their respective representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property in the Community to inspect for the purpose of ascertaining whether or not these restrictive covenants have been or are being complied with. Such Persons shall not be deemed guilty of trespass by reason of such entry. If construction does not commence on a project for which plans have been approved within twelve (12) months of such approval by Declarant or Rock-Tenn, as the case may be, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the plans to the Declarant and Rock-Tenn for reconsideration. All work approved in accordance with this Article shall be diligently pursued, and shall be completed in its entirety within six (6) months from the date of commencement, unless otherwise agreed in writing by the Declarant and Rock-Tenn; provided however, the foregoing six (6) month period shall not apply to work undertaken by or on behalf of Declarant during the Development Period. All approved changes, modifications, and improvements must be completed in their entirety. An Owner may not construct only a portion or part of an approved change, modification, or improvement.

6.4 Limitation of Liability. Plans and specifications are not approved for engineering or structural design or quality of materials and by approving such plans and specifications the Declarant or Rock-Tenn, respectively, assumes no liability or responsibility therefore or for any defect in any structure constructed from such plans and specifications. Neither Declarant, Rock-Tenn, the Association, nor the officers, directors, members, employees and agents of any of them, shall be liable in damages to anyone submitting plans and specifications to any of them for approval or to any Owner of property affected by these restrictions by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every Person who submits plans and specifications and every Owner agrees that such Person or Owner will not bring any action or suit against Declarant, Rock-Tenn, the Association or the officers, directors, members, employees and agents of any of them, to recover any damages and hereby releases, remises, quitclaims and covenants not to sue for all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given.

6.5 No Waiver. The approval of the Declarant or Rock-Tenn, as the case may be, of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring approval or consent of the Declarant or Rock-Tenn, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications or drawings or matters whatever subsequently or additionally submitted for approval or consent.

6.6 Variances. Notwithstanding anything to the contrary contained herein, the Declarant, with the prior written consent of Rock-Tenn, shall be authorized to grant individual variances from any of the provisions of this Declaration and the architectural guidelines if it determines

that waiver of application or enforcement of the provision in a particular case is dictated by unique circumstances, such as, but not limited to, topography, natural obstructions, hardship, aesthetic considerations or environmental considerations and would not be inconsistent with the overall scheme of development for the Community. No variance shall (a) be effective unless in writing, (b) be inconsistent with the overall scheme of development for the Community, or (c) prevent the Declarant or Rock-Tenn, respectively, from denying a variance in other similar circumstances. For purposes of this provision, the inability to obtain approval of any governmental agency or the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

6.7 Enforcement. Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Declarant, an Owner shall, at its own cost and expense, remove such nonconforming structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Declarant and its respective agents shall have the right to enter the property, remove the nonconforming structure or improvement, and restore the property to substantially the same condition as previously existed. All costs, including, without limitation, attorney's fees, may be assessed against the Unit as a specific assessment. Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the architectural guidelines may be excluded by the Declarant from the Community, subject to any applicable notice and hearing procedures contained in the Bylaws. In such event, neither the Declarant, Rock-Tenn, the Association or the officers, directors, members, employees and agents of any of them, shall be held liable to any Person for exercising the rights granted by this paragraph. In addition to any other remedies available to the Declarant or Rock-Tenn, in the event of noncompliance with this Article, the Declarant or Rock-Tenn may record in the appropriate land records a notice of violation hereunder naming the violating Owner. In addition to the foregoing, the Declarant shall have the authority and standing to pursue any and all remedies available at law and equity to enforce the provisions of this Article. In addition to the foregoing, Rock-Tenn shall have the authority and standing to pursue any and all remedies available at law and equity to enforce the provisions of this Article.

6.8 Architectural Review Committee. Except for those rights granted to Rock-Tenn herein, until (a) the Declarant no longer has the right to unilaterally annex additional property to the Community; and (b) each Unit has been improved with a structure for which a certificate of occupancy has been issued, the Declarant shall have the sole right, power and authority under this Article. There shall be no surrender of this right except in a written instrument in recordable form executed by Declarant and recorded in the Office of the Clerk of Superior Court of Gwinnett County, Georgia. Upon expiration or earlier surrender in writing of all or a portion of such right and authority, the Board of Directors shall appoint an Architectural Review Committee of the Association ("ARC"), which shall then have such jurisdiction over architectural control under this Article as may have been relinquished by the Declarant. The Declarant may in its sole discretion relinquish architectural control as to certain types of improvements or modifications while retaining control over all other building and construction in the Community. For example and without limitation, the Declarant may relinquish control over modifications of existing structures to the ARC while retaining all authority to review and

approve new home construction. Any right, power or authority of the Declarant which may be relinquished prior to the termination of the rights of Declarant hereunder shall be by written recorded instrument only and no such right, power or authority shall be relinquished by implication or otherwise. The establishment of an advisory ARC shall not be deemed to be a relinquishment by Declarant of any of its right, power and authority hereunder. After the termination of all rights of Declarant hereunder, the ARC shall have all right, power and authority to review and approve building and construction activity within the Community hereunder and this Article shall then be read and interpreted as if any reference to the Declarant in this Article 6 were a reference to the ARC. Nothing contained herein shall be construed as limiting the independent right, power and authority of Rock-Tenn to take action hereunder, which right, power and authority shall continue until terminated as provided in Section 11.6 hereof.

Article 7  
Use Restrictions and Rules

7.1 Rules and Regulations. The Board of Directors may, from time to time, with the consent of Declarant and without a vote of the Owners, promulgate, modify or delete rules and regulations applicable to the Units in the Community. Such rules and regulations shall not be inconsistent with this Declaration. Such rules and regulations shall be distributed to all Owners prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled or modified by a majority of the votes attributable to the Units in the Community and the consent of Declarant.

7.2 Residential Use. Each Unit shall be used for single-family residential purposes exclusively. Leasing of a Unit for single-family residential occupancy shall not be considered a business or business activity. No trade or business of any kind may be conducted in or from a Unit, except that the Owner or Occupant in residence at the Unit may conduct business activities within the dwelling unit so long as the business activity: (a) does not otherwise violate the provisions of the Declaration or Bylaws; (b) is not apparent from the exterior of the Unit; (c) does not unduly increase traffic flow or parking congestion; (d) conforms to all zoning requirements for the Community; (e) does not increase the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage; (f) is consistent with the residential character of the Community; (g) does not constitute a nuisance or a hazardous or offensive use; and (h) does not threaten the security or safety of other residents of the Community, all as may be determined in each case in the sole discretion of the Board of Directors. The Board may issue rules regarding permitted business activities. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (x) the activity is engaged in full or part-time; (y) the activity is intended to or does generate a profit; or (z) a license is required for the activity.



7.3 Leasing. Units may be leased for single-family residential purposes. Unless otherwise provided by the Board of Directors, all leases shall have a minimum term of at least twelve (12) months. All leases shall require, without limitation, that the Occupants acknowledge receipt of a copy of the Declaration, Bylaws, use restrictions and rules and regulations of the Association and obligate the Occupants to comply with the foregoing.

7.4 Signs. No sign of any kind shall be erected within the Community without prior approval in accordance with the provisions of Article 6 hereof. For-sale signs and security signs not larger than 18-inches by 18-inches and any signs required by legal proceedings, statutory code or ordinance may be erected upon any Unit without prior written approval in accordance with Article 6 hereof. In addition, no approval shall be required pursuant to Article 6 hereof for directional signs and traffic signs erected by Declarant during the Development Period. The provisions of this Section shall not apply to any Mortgagee in possession due to foreclosure of a first Mortgage or as grantee pursuant to any deed in lieu of such foreclosure. The Board may impose a fine of One-Hundred and Fifty and No/100 Dollars (\$150.00) per day for display of any sign in violation of this provision which is not removed within twenty-four hours after written demand is delivered to the Owner at that Unit.

7.5 Vehicles; Parking. Vehicles shall be parked only in appropriate parking spaces serving the Unit or other designated areas, if any. No on-street parking, other than in connection with special events as approved by the Board of Directors, shall be permitted within the Community. All parking shall be subject to such rules and regulations as the Board may adopt. The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, golf carts, trucks, campers, buses, vans and automobiles. The term "parking areas" shall refer to the number of garage parking spaces and the spaces located in the driveway of each Unit. Carports shall not be permitted. Garage doors should be kept closed at all times, except during times of ingress and egress from the garage. No vehicle may be left upon any portion of the Community, except in a garage or other area designated by the Board, for a period longer than five days if it is not licensed or if it is in a condition such that it is incapable of being operated upon the public highways. After such five-day period, such vehicle may be removed from the Community by the Board of Directors. Any towed vehicle, boat, personal watercraft, recreational vehicle, motor home, trailer, motorcycle, minibike, scooter, go-cart, golf cart, commercial truck, camper, bus or mobile home regularly stored in the Community or temporarily kept in the Community, except if kept in a garage, for periods longer than 24 hours may be removed from the Community by the Board of Directors. Trucks with mounted campers which are used as a primary means of transportation shall not be considered recreational vehicles provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal. No eighteen wheel trucks or the cabs of such trucks or trucks with a load capacity in excess of three-quarters of a ton shall be parked, kept or stored within the Community except during the time reasonably necessary to provide service or delivery within the Community.

If any vehicle is parked on any portion of the Community in violation of this Section or in violation of the Association's rules and regulations, the Board or agent of the Association may place a notice on the vehicle specifying the nature of the violation and stating that after twenty-four (24) hours the vehicle may be towed. The notice shall include the name and telephone

number of the person or entity that will do the towing and the name and telephone number of a person to contact regarding the alleged violation. If twenty-four (24) hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six (6) months of such notice, the Board or agent of the Association may have the vehicle towed in accordance with the notice, without further notice to the Owner or user of the vehicle.

If a vehicle is parked in a fire lane, is blocking another vehicle, is obstructing the flow of traffic, is parked on any grassy area, is parked in any alley, or otherwise creates a hazardous condition, no notice shall be required and the Board or agent of the Association may have the vehicle towed immediately. If a vehicle is towed in accordance with this subparagraph, neither the Association nor any officer or agent of the Association shall be liable to any person for any claim of damage as a result of the towing activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow.

**7.6 Animals and Pets.** No animals, livestock, or poultry of any kind may be raised, bred, kept or permitted on any Unit, with the exception of dogs, cats or other usual and common household pets in reasonable number, as determined by the Board. No animals shall be kept, bred or maintained for commercial purposes without written Board approval. All permitted pets shall be reasonably controlled by the Owner whenever outside the dwelling and shall be kept in such a manner as to not become a nuisance by barking or other acts. The owners of the pet shall be responsible for all of the pet's actions. If, in the sole opinion of the Board, any animal becomes dangerous or an annoyance or nuisance in the Community or to nearby property or destructive of wildlife, such animal shall be removed from the Community. By way of explanation and not limitation, this Section may be enforced by exercising self-help rights provided in Section 11.3 hereof. This provision shall not be construed to interfere with any provision under the Americans with Disabilities Act, the Fair Housing Amendments Act, or any similar applicable federal, state or local law, ordinance or regulation.

**7.7 Nuisance.** It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly or unkempt condition on a Unit. No property within the Community shall be used, in whole or in part, for the storage of any property or thing that will cause such Unit to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort or serenity of the occupants of surrounding property. No plants, animals, device or thing of any sort shall be maintained in the Community whose activities or existence is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the Community by other Owners and Occupants. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices, except security devices used exclusively for security purposes, screaming, shouting, excessively loud talking, fighting, raucous behavior, insobriety, playing loud music or television, use of any alarm, equipment, or device, mechanical or otherwise which creates or produces excessively loud sounds or any vibrations, or any conduct which creates any noxious or offensive odors outside a home shall be permitted, located, used or placed on any Unit, or any portion thereof. The inconvenience complained of shall not be fanciful, or such as would affect

only one of fastidious taste, but it shall be such as would affect an ordinary, reasonable person as determined in a particular instance by the Board.

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

7.9 Antennas. No exterior antenna, receiving dish or similar apparatus of any kind for receiving or transmitting of radio or video signals shall be placed, allowed or maintained upon any portion of the Community, including any Unit, unless approved in accordance with the provisions of Article 6 hereof; provided, however, no such approval shall be necessary to install (1) antennas designed to receive direct broadcast satellite services, including direct-to-home satellite services, that are one meter or less in diameter; (2) antennas designed to receive video programming services via multi-point distribution services that are one meter or less in diameter or diagonal measurement; or (3) antennas that are designed and intended to receive television broadcast signals. Owners shall install any permitted antennae on the rear of the structure unless an acceptable quality signal cannot otherwise be obtained and, in such case, any such items shall be installed in the least conspicuous location available on the Unit that permits reception of an acceptable signal, and in accordance with any rules and regulations.

7.10 Tree Removal. No trees that are more than four (4) inches in diameter at a point twelve (12) inches above the ground and no ornamental or flowering trees, including, but not limited to, dogwood trees, cottonwood trees, cherry trees or apple trees, regardless of diameter, shall be removed from a Unit without prior written approval pursuant to Article 6 hereof. Owners shall also comply with any local ordinance and zoning condition applicable to tree removal. In the event of a conflict between the provisions of this Section and any local ordinance or zoning condition, the more restrictive provision shall govern. This provision shall not apply to the removal of trees by the Declarant or the Association in connection with construction approved under Article 6 hereof.

7.11 Drainage. Catch basins, retention ponds, detention ponds, drainage swales and drainage easement areas are for the purpose of controlling the natural flow of water only. Owners shall not obstruct or alter the drainage flow across or from their Unit after location and installation of catch basins, retention ponds, detention ponds, drainage swales, storm sewers or storm drains without approval in accordance with the provisions of Article 6 hereof.

7.12 Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, shrub or other planting or thing shall be placed or permitted to remain where, in the opinion of the Board, it would create an unsafe condition.

7.13 Garbage Cans, Woodpiles, Etc. All garbage cans, woodpiles, air conditioning units, heat pumps, swimming pool pumps, filters and related equipment, and other similar items shall be located or screened so as to be concealed from view from neighboring streets and property.

All rubbish, trash and garbage shall be regularly removed and shall not be allowed to accumulate. Declarant, however, hereby expressly reserves the right to dump and bury rocks and trees on property within the Community as needed for efficient construction and to allow an approved builder to bury rocks and trees removed from a building site on such building site. Trash, garbage, debris, or other waste matter of any kind may not be burned within the Community except by the Declarant.

7.14 Subdivision of Units. No Unit shall be subdivided or its boundary lines changed except with the prior written approval in accordance with the provisions of Article 6 hereof. Declarant, however, hereby expressly reserves the right to subdivide and/or revise and re-record the subdivision plat of any Unit(s) with the consent of the Owner of the effected Unit(s) and to approve the revision and re-recording of any plat of any Unit(s) owned by any builder or developer, including, but not limited to, changing any Unit to Common Property or creating a public or private street over any Unit or property that was formerly a Unit, without the consent of any Person, other than the Owner(s) of such property.

7.15 Firearms. The use or discharge of firearms in the Community is prohibited. The term "firearms" includes, without limitation, "B-B" guns, pellet guns and other guns of any type, regardless of size.

7.16 Fences. No fence or fencing type barrier of any kind shall be placed, erected, allowed or maintained upon any part of the Community without prior written approval in accordance with the provisions of Article 6 hereof. Guidelines detailing acceptable fence styles or specifications may be issued pursuant to Article 6, but in no event may a chain link or barbed wire fence be approved. Notwithstanding anything to the contrary contained herein, the Declarant and the Association may erect any type of fence in the Community as necessary to satisfy the requirements of any law, regulation or governmental entity without prior written approval in accordance with the provisions of Article 6 hereof. In addition, the Declarant and the Association may, with the prior written consent of Rock-Tenn, erect any other type of fence in the Community as necessary for the health and safety of Owners and Occupants without additional approval in accordance with the provisions of Article 6 hereof.

7.17 Utility Lines. Except as may be permitted under and pursuant to Article 6 hereof, no overhead utility lines, including lines for cable television, shall be installed within the Community, except for temporary lines as required during construction and lines installed by or at the request of the Declarant.

7.18 Air-Conditioning Units. No window air-conditioning units may be installed.

7.19 Lighting. Exterior lighting on any Unit visible from the street shall not be permitted, except for: (a) approved lighting as originally installed on a Unit; (b) one decorative post light; (c) street lights in conformity with an established street lighting program for the Community; (d) seasonal decorative lights; (e) front house illumination of model homes; or (f) other lighting approved under and pursuant to Article 6 hereof.

7.20 Artificial Vegetation, Exterior Sculpture and Similar Items. No artificial vegetation shall be permitted on the exterior of any Unit. Exterior sculpture, fountains, flags or similar items must be approved under and pursuant to Article 6 hereof.

7.21 Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless as an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Declarant, in accordance with the provisions of Article 6 hereof.

7.22 Swimming Pools. No swimming pool shall be constructed, erected or maintained upon any Unit without prior written approval in accordance with the provisions of Article 6 hereof and in no event shall any above-ground swimming pool be permitted.

7.23 Gardens, Play Equipment and Water Features. No vegetable garden, hammock, statuary, play equipment (including, without limitation, basketball goals) or garden pool shall be erected on any Unit without the prior written approval in accordance with the provisions of Article 6 hereof.

7.24 Mailboxes. All mailboxes serving Units shall be approved in accordance with the provisions of Article 6 hereof. Identical replacement mailboxes may be installed without further approval; but no modification to or change in mailboxes may be made unless approved in accordance with the provisions of Article 6 hereof.

7.25 Clotheslines. No exterior clotheslines of any type shall be permitted upon any Unit within the Community.

7.26 Entry Features. Owners shall not alter, remove or add improvements to any entry features constructed by the Declarant on any Unit, or any part of any easement area associated therewith without prior approval in accordance with the provisions of Article 6 hereof.

7.27 Window Treatments. No foil or other reflective materials shall be used on any windows for sunscreens, blinds, shades, or any other purpose. The side of all window treatments which can be seen at any time from the outside of any structure located on a Unit must be white or off-white or an alternative color approved in accordance with the provisions of Article 6 hereof.

7.28 Outbuildings and Similar Structures. No structure of a temporary nature shall be erected or allowed to remain on any Unit, and no trailer, camper, shack, tent, garage, barn or other structure may be used as a residence, either temporarily or permanently, without written approval in accordance with the provisions of Article 6 hereof. However, this Section shall not be construed to prevent Declarant and those engaged in development, construction, marketing, property management or sales in the Community from using sheds, trailers or other temporary structures for any of the foregoing purposes during the Development Period. In addition, nothing in this Declaration shall be construed to prevent Declarant or any builder from developing, constructing, marketing, or maintaining model homes or speculative housing within the Community.

7.29 Traffic Regulations. All vehicular traffic on the private streets and roads in the Community shall be subject to the provisions of the state and local laws concerning operation of motor vehicles on public streets. The Association is hereby authorized to promulgate, administer, and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including reasonable safety measures and speed limits and including modifications of those in force on public streets, within the Community. The Association shall be entitled to enforce same by establishing such enforcement procedures as it deems appropriate, including levying fines for the violation thereof. In the event of a conflict between such provisions of state and local laws and such rules and regulations promulgated by the Association, the rules and regulations of the Association shall govern. Only drivers properly licensed to operate motor vehicles on the public roads within the State of Georgia may operate any type of motor vehicle within the Community. All vehicles of any kind and nature which are operated on the streets in the Community shall be operated in a careful, prudent, safe, and quiet manner and with due consideration for the rights of all Owners and Occupants.

#### Article 8

##### Insurance and Casualty Losses

8.1 Insurance on Common Property. The Association shall obtain the insurance coverage necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association ("Fannie Mae"), the U.S. Department of Veterans Affairs ("VA"), and the U.S. Department of Housing and Urban Development ("HUD"), as applicable to the Community. Accordingly, the Board of Directors shall obtain casualty insurance for all insurable improvements located on the Common Property which the Association is obligated to maintain. This insurance shall provide, at a minimum, fire and extended coverage and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The Board of Directors shall obtain a public liability policy applicable to the Common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least One Million (\$1,000,000.00) Dollars. Policies may contain a reasonable deductible as determined by the Board of Directors. In addition to the other insurance required by this Section, the Board of Directors shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on directors, officers, employees and other persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall cover the maximum funds that will be in the custody of the Association or its management agent at any time while the policy is in force, or any lesser amount of fidelity coverage allowable under the applicable Fannie Mae guidelines. Fidelity coverage shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation. All such insurance coverage shall be written in the name of the Association.

8.2 Individual Insurance. By virtue of taking title to a Unit subject to the terms of this Declaration, each Owner acknowledges that the Association has no obligation to provide any insurance for any portion of individual Units and each Owner covenants and agrees with all other

Owners and with the Association that each Owner shall carry all-risk casualty insurance on all structures and a liability policy covering damage or injury occurring on the Owner's property. The casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an all-risk policy, if reasonably available and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The policies required hereunder shall be in effect at all times and a copy of such policies shall be furnished to the Association upon request. In the event that any Owner of a Unit fails to obtain insurance as required by this Declaration, the Association may purchase such insurance on behalf of the Unit Owner and assess the cost thereof to the Owner, as a specific assessment.

**8.3 Damage and Destruction -- Insured by Association.** Immediately after damage or destruction by fire or other casualty to any portion of any improvement covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Any damage or destruction to property covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, a proposal not to repair or reconstruct such property is approved by at least seventy-five percent (75%) of the Total Association Vote and the Declarant. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the members of the Association, levy a special assessment against the Owner of each Unit. Additional assessments may be made in like manner, as necessary, at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association. In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, the property shall thereafter be maintained by the Association in a neat and attractive condition.

**8.4 Damage and Destruction -- Insured by Owners.** Improvement on a Unit damaged by fire or other casualty shall be repaired or reconstructed in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 6 of this Declaration. The repair or reconstruction shall be completed within seventy-five (75) days after the damage occurred or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. Alternatively, the Owner may elect to demolish all improvements on the Unit

and remove all debris and ruins therefrom within seventy-five (75) days after such damage occurred and thereafter maintain the Unit in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay all costs which are not covered by insurance proceeds.

Article 9  
Mortgagee Provisions

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

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

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

Article 10  
Easements

10.1 General. Each Unit shall be subject to those easements, if any, shown or set forth on the recorded subdivision plats for the Community, as amended from time to time as well as the easements now or hereafter established by the Declarant in this Declaration or by any other document recorded in the Office of the Clerk of Superior Court for Gwinnett County, Georgia.

10.2 Easements for Use and Enjoyment – Common Property. Except as otherwise provided herein, every Owner of a Unit shall have a right and easement of ingress and egress, use and enjoyment by the Owner and the Occupants of the Owner's Unit in and to the Common Property which shall be appurtenant to and shall pass with the title to each Unit, subject to the following:



(a) the right of the Association to charge reasonable admission and other fees for the use of the Community recreational facilities, if any, to limit the number of Persons who may use the Community recreational facilities, if any, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by authorized users and their guests and invitees;

(b) the right of the Association to suspend the right of an Owner to use the Community recreational facilities, if any, for any period during which any past due assessment against any Unit of the Owner remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, Bylaws or rules and regulations;

(c) the right of the Association to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon and, upon the affirmative vote of the Owners of at least two-thirds (2/3) of the Units (other than Declarant) and the consent of Declarant, to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property; provided, however, the lien and encumbrance of any such Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant or any Owner or the holder of any Mortgage encumbering any Unit or other property located within the Community (Regardless of any contrary provision in this Declaration or in any such Mortgage given by the Association, the exercise of any rights by the holder of such Mortgage in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of Declarant or any Owner or the holder of any Mortgage encumbering any Unit or other property located within the Community.);

(d) the right of the Association, acting through the Board of Directors and without a vote of the members, to dedicate or grant licenses, permits, easements and rights-of-way over, under and through the Common Property;

(e) the right of the Association to dedicate or transfer all or any portion of the Common Property upon the approval of the Owners of at least two-thirds (2/3) of the Units and the consent of the Declarant;

(f) all other rights of the Association, the Declarant, Owners and Occupants set forth in this Declaration, in any Supplementary Declaration or in any deed conveying Common Property to the Association; and

(g) all encumbrances and other matters shown by the public records affecting title to the Common Property.

10.3 Easements for Utilities. There is hereby reserved to the Declarant and granted to the Association a blanket easement upon, across, above and under all property within the Community for access, ingress, egress, installation, alteration, repairing, replacing, and maintaining all utilities serving the Community or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other

service such as, but not limited to, a master television antenna system, cable television system, or security system which the Declarant or the Association might decide to have installed to serve the Community. Declarant, the Association or the designee of either, as the case may be, may alter drainage and water flow, install, repair, replace and maintain or authorize the installation, repairing, replacing and maintaining of such wires, conduits, cables and other equipment related to the providing of any utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Declarant or the Board shall have the right to grant such easement.

10.4 Easement for Emergency Entry. The Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security and safety reasons and to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, Bylaws, and rules, which right may be exercised by any member of the Board, the officers, agents, employees, and managers of the Association and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Unit to cure any condition which may increase the possibility of a fire, slope erosion or other hazard in an emergency situation and in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Association, but shall not authorize entry into any single family dwelling without permission of the Owner.

10.5 Easement for Maintenance - Association. Declarant hereby grant to the Association a perpetual easement across the exterior portions of all Units as may be reasonably necessary for the maintenance required hereunder. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment to Units, reasonable steps shall be taken to protect such property and damage shall be repaired by the Association or its contractors at their sole expense.

10.6 Easement for Maintenance - Owners. Declarant hereby reserves for the benefit of each Unit reciprocal appurtenant easements between adjacent Units for the purpose of maintaining or repairing the improvements located on each Unit which easement shall extend to a distance of three (3) feet as measured from any point on the common boundary between the Unit. The easement shall be used only for such period of time as is reasonably necessary in order to complete the maintenance or repair. The Owner exercising this easement right shall be liable for the prompt repair of any damage to the improvements located on the Unit over which this easement is exercised which arises out of such maintenance or repair work.

10.7 Easement for Signage, Lighting, Landscaping and Similar Items. There is hereby reserved to Declarant for so long as it retains its rights as Declarant, a nonexclusive easement over all Units and Common Property for a distance of ten (10) feet behind any Unit line which parallels a street or alley (whether public or private) for the purpose of erecting and maintaining street intersection signs, directional signs, temporary promotional signs, plantings, street lights, entrance features and/or "theme areas," lighting, stone, wood, or masonry wall features and/or related landscaping.

10.8 Easements for Encroachment and Overhang. There is hereby reserved to the Declarant for the benefit of each Unit a reciprocal appurtenant easement for encroachment and overhang between adjacent Units and between a Unit and adjacent Common Property due to the original construction or the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than two (2) feet, as measured from any point on such common boundary; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, Occupant, or the Association, other than the Declarant in the original construction of the Units.

10.9 Easement for Entry Features and Streetscapes. There is hereby reserved to the Declarant and granted to the Association an easement for ingress, egress, installation, construction, landscaping and maintenance of entry features and similar streetscapes for the Community, over and upon any portion of a Unit containing such entry features or streetscapes as may be more fully described on the recorded subdivision plats for the Community. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around entry features and streetscapes and the right to grade the land under and around the same.

10.10 Easement for Drainage. There is hereby reserved to the Declarant and granted to the Association and any approved builder a blanket easement across all Units for creating and maintaining satisfactory storm water drainage in the Community; provided, however, such easement area shall not include any portion of a Unit within the outer perimeter of the structure. This easement shall include the right to construct and maintain catch basins, retention ponds, detention ponds, drainage swales, storm sewers, storm drains, sloping banks, cut or fill. This easement expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the land, or to take any other similar action reasonably necessary, following which Declarant, or Association or an approved builder, as applicable, shall restore the affected property to its original condition as near as practicable. It is anticipated that increased storm water run off across downstream Units will result from the construction of impervious surface within or adjacent to the Community. Neither the Declarant, the Association or any builder or Owner constructing according to plans and specifications approved under Article 6 hereof shall have any liability to any Owner due to the increased flow or increased velocity of surface water resulting from approved construction within the Community.

10.11 Easement During Construction and Sale Period. Notwithstanding any provisions now or hereafter contained in this Declaration, the Bylaws, Articles of Incorporation, use restrictions, rules and regulations, architectural guidelines, and amendments thereto, Declarant reserves an easement across the Community to maintain and carry on, upon such portion of the Community as Declarant may reasonably deem necessary, such facilities and activities as in the sole opinion of Declarant may be required or convenient for Declarant's development, construction and sales activities related to property hereby and hereafter subjected to this Declaration or for the development, construction or benefit of any neighboring property including, but not limited to: the right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in the Community, including, without limitation, any Unit; the right to tie into any portion of the Community with streets, driveways,

paths, parking areas and walkways; the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, cable television, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to grant easements over, under, in or on the Community, including without limitation the Units, for the benefit of neighboring properties for the purpose of tying into and/or otherwise connecting and using sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to convert Units (with the consent of the Owner thereof) to Common Property and/or streets; the right to construct recreational facilities, utilities and other improvements on Common Property; the right to carry on sales and promotional activities in the Community; and the right to construct and operate business offices, signs, construction trailers, model residences and sales offices. Declarant may use residences, offices or other buildings owned or leased by Declarant as model residences and sales offices without charge. This Section shall not be amended without the Declarant's written consent until the Declarant's rights hereunder have terminated as herein provided.

10.12 Easement for Private Streets, Alleys, Sidewalks and Signs. Declarant hereby grants, conveys, declares, creates, imposes and establishes a perpetual, non-exclusive right-of-way easement for vehicular and pedestrian access, ingress and egress (a) over and across the private streets and alleys within the Community as depicted on the subdivision plat(s) recorded in the Office of the Clerk of Superior Court of Gwinnett County, Georgia. The right-of-way easement herein granted shall permit joint usage of such easement by (i) the Owners and Occupants, (ii) the legal representatives, successors and assigns of the Owners, and (iii) invitees and licensees of the Owners and Occupants. Declarant hereby expressly reserves for itself, its successors and assigns, all rights and privileges incident to the ownership of the fee simple estate of any right-of-way easement area which are not inconsistent with the rights and privileges herein granted, including, without limitation, the right to maintain one or more proprietary signs on the easement area and the right to grant additional non-exclusive easements to third parties, over, under and across the easement area. Declarant hereby reserves for the benefit of Declarant and grants to the Association as Common Property, the perpetual nonexclusive right and easement upon, over and across those utility easement areas and private streets, alleys and roads for the installation, maintenance, and use of such streets and roads, sidewalks, traffic directional signs, grading for proper drainage of said streets and roads, and related activities and improvements.

Article 11  
General Provisions

11.1 Enforcement. Each Owner and Occupant shall comply strictly with the Bylaws, rules and regulations and use restrictions, as amended or modified from time to time, and with the covenants, conditions, easements and restrictions set forth in this Declaration, the recorded subdivision plats for the Community and in the deed to such Owner's Unit, if any. The Board of Directors may impose fines or other sanctions for violations of the foregoing, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the Bylaws or the rules and regulations shall be grounds for an action to recover

sums due for damages or injunctive relief or both, maintainable by the Association, the Declarant or an aggrieved Owner. Failure by the Declarant, the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Association shall have the right to record in the appropriate land records a notice of violation of the Declaration, Bylaws, rules and regulations, use restrictions or design guidelines and to assess the cost of recording and removing such notice against the Unit of the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

11.2 Occupants Bound. All provisions of the Declaration, Bylaws, rules and regulations, use restrictions and design guidelines which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants and the guests and invitees of Owners and Occupants. The Owner shall be responsible for insuring that the Occupants, the guests, invitees and licensees of the Owner and Occupant strictly comply with all provisions of the Declaration, Bylaws, rules and regulations, use restrictions and design guidelines. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not timely paid, the fine may then be levied against the Owner.

11.3 Self-Help. In addition to any other remedies provided for herein, the Association, the Declarant, the ARC or their respective duly authorized agents shall have the power to enter upon any Unit or any other portion of the Community to abate or remove any structure, thing or condition which violates this Declaration, the Bylaws, the rules and regulations or the use restrictions. Unless an emergency situation exists, the violating Owner shall be given ten (10) days' written notice of the intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after giving any notice required herein or by law. All costs of self-help, including, without limitation, reasonable attorney's fees actually incurred, shall be assessed against the violating Owner as a specific assessment.

11.4 Duration. The covenants, conditions, restrictions and easements contained in this Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by the Association, the Declarant and any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent provided by law; provided, however, if and to the extent that, Georgia law limits the period during which covenants restricting land to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, after which time, any such provision(s) shall be (a) automatically extended for successive periods of twenty (20) years (or the maximum period allowed by applicable law, if less), unless a written instrument signed by the then Owners of at least two-thirds (2/3) of the Units has been recorded within the year immediately preceding the beginning of a twenty (20) year renewal period agreeing to terminate the same and Rock-Tenn; or (b) extended, renewed, modified or terminated as otherwise provided herein or by applicable law.

11.5 Termination of Rights of Declarant. The rights of Declarant to take, approve or consent to actions under this Declaration, the Articles of Incorporation and the Bylaws shall cease and be of no further force and effect upon the earlier of: (a) the date that the Declarant no longer owns any property in the Community and Declarant no longer has the right to unilaterally annex additional property to the Community as provided herein and a certificate of occupancy

has been issued for a structure on each Unit in the Community; or (b) the date of recording by Declarant in the real estate records of the county where the Community is located of a written instrument terminating all of Declarant's rights hereunder.

11.6 Termination of Rights of Rock-Tenn. The rights of Rock-Tenn to take, approve or consent to actions pursuant to Article 6 of this Declaration shall cease and be of no further force and effect upon the earlier of: (a) the conveyance of all of the Rock-Tenn Parcel to another entity or Person which is not a wholly controlled subsidiary or affiliate of Rock-Tenn or the Rock-Tenn Company; or (b) the date of recording by Rock-Tenn in the Gwinnett County, Georgia land records of a written instrument terminating Rock-Tenn's rights hereunder.

11.7 Enforcement Rights of Rock-Tenn. Notwithstanding anything to the contrary contained herein, Rock-Tenn shall have the authority and standing to pursue any and all remedies available at law and equity to enforce any of the rights granted to Rock-Tenn in this Declaration. Additionally, Declarant hereby grants to Rock-Tenn the affirmative right to pursue any and all remedies available at law and equity to enforce violations of Articles 5, 6 and 7 of this Declaration, respectively.

11.8 Liability of Rock-Tenn. All Owners and Occupants acknowledge and agree that Rock-Tenn shall owe no duty whatsoever, either expressed or implied, to any Person or entity to inspect the Community or become familiar with: (a) any conditions located therein, including, but not limited to, dangerous or hazardous conditions, attractive nuisances, defects and the like, and (b) violations of this Declaration. All Owners and Occupants and Declarant hereby release, indemnify, defend, protect and hold harmless Rock-Tenn, from and against any and all claims, liabilities, losses, damages, costs, and expenses resulting from the conditions and violations referred to in the preceding sentence, and from the Declarant's or Association's failure to remedy any such conditions or violations and failure to maintain the Community.

11.9 Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Units subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, without limitation, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Units subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or private insurance company, including, without limitation, the U.S. Department of Housing and Urban Development and the U.S. Department of Veterans Affairs, to insure or guarantee Mortgage loans on the Units subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Unit unless the Owner of such Unit consents thereto in writing. Further, with the prior written consent of Rock-Tenn, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owners hereunder nor shall it adversely affect title to any Unit without the consent of the affected Owner. The Board of Directors, with the written consent of the

Declarant and Rock-Tenn, and without a vote of the Owners may amend this Declaration for the sole purpose of electing to be governed by the provisions of the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, *et seq.* In addition to the above, this Declaration may be amended upon the affirmative vote or written consent of the Owners of at least two-thirds (2/3) of the Units and the written consent of Declarant and Rock-Tenn. Amendments to this Declaration shall become effective upon recordation unless a later effective date is specified therein. The consent of the Declarant to any amendment shall be evidenced by the execution of said amendment by Declarant. The consent of the requisite number of Owners to any amendment shall be evidenced by the execution of the amendment by said Owners, or, in the alternative, the sworn statement of the President or any Vice President or the Secretary of the Association attached to or incorporated in the amendment, which sworn statement states unequivocally that the consent of the required number of Owners was obtained and that any notices required by this Declaration, the Bylaws, the Articles of Incorporation and Georgia law were given. In addition, no amendment to this Declaration shall modify, alter or delete any provision of this Declaration which benefits Rock-Tenn without the written consent of Rock-Tenn attached to and recorded with such amendment.

Any amendments to this Declaration requiring the approval of Rock-Tenn as provided in Section 11.9 hereof, shall be submitted to the Designated Representative for Rock-Tenn at 504 Thrasher Street, Norcross, Georgia 30071 by certified or registered mail, return receipt requested, and any determination, decision, authorization, consent, approval, action or inaction by, and the execution of any document on behalf of Rock-Tenn by the Designated Representative, shall be binding upon Rock-Tenn. If Rock-Tenn fails to approve or to disapprove any amendment to this Declaration within fifteen (15) days after receipt of the same, said approval shall be deemed to have been given.

11.10 Challenges to Amendment. Any action to challenge the validity of an amendment adopted as provided herein must be brought within one (1) year of the effective date of such amendment. No action to challenge such amendment may be brought after such time.

11.11 Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine or feminine pronoun shall include the neuter, masculine and feminine.

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

11.13 Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular Article or Section to which they refer.

11.14 No Merger. There shall be no merger of any of the covenants, conditions, restrictions or easements created or reserved hereby with the fee estate of Declarant, by reason of the fact that Declarant may own or hold the estate or interest both encumbered and benefited by such covenants, conditions, restrictions or easements and no such merger shall occur unless and until Declarant, while owning all of the estate or interests shall execute a written statement or instrument affecting such merger and shall duly record the same.

11.15 Preparer. This Declaration was prepared by Lisa A. Crawford, Dorough & Dorough, LLC, Attorneys at Law, Two Decatur TownCenter, Suite 520, 125 Clairmont Avenue, Decatur, Georgia 30030-2551.

11.16 Notices. Notices provided for in this Declaration or the Articles or Bylaws shall be in writing, and shall be addressed to an Owner at the address of the Unit and to the Declarant or the Association at the address of their respective registered agent on file with the Secretary of State of the State of Georgia. Any Owner may designate a different address for notices to such Owner by giving written notice to the Association. Notices addressed as above shall be mailed by United States Registered or Certified Mail, return receipt requested, postage paid, or delivered in person, including delivery by private courier service. The time period in which a response to any such notice must be given or any action taken with respect thereto, shall commence to run from the date of personal delivery or the date of receipt shown on the return receipt. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice sent.

11.17 Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

11.18 No Discrimination. No action shall be taken by the Declarant, the Association or the Board of Directors which would discriminate against any person on the basis of race, creed, color, national origin, religion, sex, familial status or disability.

11.19 Indemnification. To the fullest extent allowed by the Georgia Nonprofit Corporation Code, and in accordance therewith, the Association shall indemnify every current and former officer, director and committee member against any and all expenses, including, but not limited to, attorney's fees, imposed upon or reasonably incurred by any officer, director or committee member in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which such officer, director or committee member may be a party by reason of being or having been an officer, director or committee member. The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association and the Association shall indemnify and forever hold each such officer, director and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to



indemnification provided for herein shall not be exclusive of any other rights to which any officer, director or committee member, or former officer, director or committee member, may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

11.20 Variations. Notwithstanding anything to the contrary contained herein, the Board of Directors shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto, if it determines that waiver of application or enforcement of the provision in a particular case is warranted and would not be inconsistent with the overall scheme of development for the Community.

11.21 Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least seventy-five percent (75%) of the Total Association Vote and the consent of the Declarant. This Section shall not apply to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided herein, (c) proceedings involving challenges to *ad valorem* taxation, (d) counterclaims brought by the Association in proceedings instituted against it, or (e) actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of a contract for goods or services to which the Association is a party. This Section shall not be amended unless such amendment is made unilaterally by the Declarant as provided herein or is approved by the percentage votes necessary to institute proceedings as provided above.

11.22 Cumulative Effect; Conflict. The covenants, restrictions and provisions of this Declaration shall be cumulative with those of any Neighborhood Declaration and the Association may, but shall not be required to, enforce the latter; provided, however, in the event of conflict between or among such covenants and restrictions, and provisions of any articles of incorporation, bylaws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, those of any Neighborhood Declaration or Neighborhood Association shall be subject and subordinate to those of this Declaration and the Association. In the event of a conflict between the provisions of this Declaration and the provisions of Georgia law, then to the extent that the provisions of Georgia law cannot be waived by agreement, Georgia law shall control.

11.23 Security. The Declarant or the Association may, from time to time, take steps to provide some measure of security on the Common Property of the Community; provided, however, neither the Declarant nor the Association is a provider of security and shall have no duty to provide any security on the Common Property or otherwise. The obligation to provide security lies solely with each Unit Owner individually. Neither Declarant, the Association nor any Owner guarantees or assures to any other Owner or to any other party whomsoever that any security measures taken by the Declarant, the Association or an Owner will in any manner whatsoever provide personal protection or security to any Owner or Occupant, their personal possessions or to guests or invitees, or to any other person, and each Owner, by the acceptance of its deed, shall have assumed the entire risk as between such Owner and Declarant or the

**BK42690PG0053**

Association for any loss or damage to person or property within the Community arising from any deficiency, failure or defect in any security measures or otherwise.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Declarant herein hereby execute this instrument under seal, this 29 day of April, 2005.

DECLARANT: **NORCROSS DOWNTOWN, LLC**, a Georgia limited liability company

By: [Signature] (SEAL)  
Name: David M. Smith  
Title: Authorized Representative

Signed, sealed, and delivered in the presence of:

[Signature]  
WITNESS

[Signature]  
NOTARY PUBLIC

My Commission Expires.

[AFFIX NOTARY SEAL]



CONSENT AND JOINDER OF LENDER

Primary Capital Advisors, L.C. ("Lender") is the holder of those certain Deed to Secure Debt and Security Agreements between Norcross Downtown, LLC ("Borrower") and Lender recorded in Deed Book 42689, Page 260, et seq. of the records of Gwinnett County, Georgia, and Deed Book 42690, Page 1, et seq., aforesaid records, (said instruments, as now or hereinafter modified, amended or restated being individually referred to as the "Security Deed" or collectively referred to herein as the "Security Deeds").

Lender, acting not as Declarant but in its limited capacity as holder of the Security Deed, hereby consents to and joins in the execution and recording of the Master Declaration of Covenants, Conditions, Restrictions and Easements for Norcross Downtown and all subsequent expansions and amendments (hereinafter "Declaration") recorded in the deed book and page referenced in the upper right-hand corner of the first page of this Declaration. It is the intent and agreement of the Lender, that the Declaration not be terminated by a subsequent judicial or non-judicial foreclosure under either Security Deed, but rather that the Declaration shall remain in full force and effect after such foreclosure. The execution by Lender of this Consent and Joinder shall not be deemed to diminish, impair, limit, repudiate or forgive any obligation of Borrower under the Security Deeds or any related loan documents and Borrower shall remain fully liable to Lender for the faithful performance of all obligations thereunder. Any modification or amendment of the Declaration shall be ineffective as against the Lender unless the Lender expressly consents thereto in writing.

As collateral security for the performance of the terms of the Security Deeds, Borrower hereby assigns to Lender all of Borrower's rights as Declarant under this Declaration. Lender covenants that it will not exercise this assignment of Declarant's rights until the occurrence of an event of "default" as such term is defined in either Security Deed which has not been cured within any applicable cure period. Upon the satisfaction of all of Borrower's obligations under the Security Deeds, this Assignment shall terminate in its entirety without the necessity of any further act; however, until such time, Borrower shall not transfer to any person or entity all or part of Borrower's rights, responsibilities, obligations and privileges as Declarant without Lender's prior written consent.

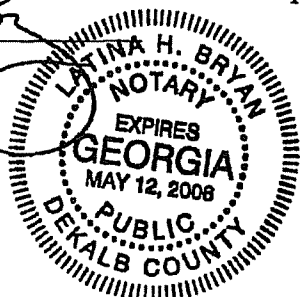
IN WITNESS WHEREOF, Lender has caused this instrument to be executed under seal by its duly authorized officers on this 29 day of April, 2005.

Signed and sealed  
In the presence of:

*[Signature]*  
\_\_\_\_\_  
Witness

*[Signature]*  
\_\_\_\_\_  
Notary Public

[NOTARY SEAL]



Primary Capital Advisors, L.C.:

BY: *K. Tucker Perkins, SUP*

TITLE: *Senior Vice President*

EXHIBIT "A"  
Property Description

All that certain tract or parcel of land lying and being in Land Lot 243 and 254, 6<sup>th</sup> District, City of Norcross, Gwinnett County, Georgia, and being more particularly described as follows:

**BEGINNING** at an iron pin set (1/2" rebar), said point being located at the intersection of the Southeasterly right-of-way of West Peachtree Street (30 foot R/W) with the Southerly right-of-way of Autry Street (30 foot R/W); thence along said right of way of Autry Street the following courses and distances: South 55°22'27" East, 62.28 feet to a found iron pin (1/2" rebar); thence South 55°24'10" East, 129.03 feet to a found iron pin (1/2" flat-bar); thence South 57°40'11" East, 20.05 feet to a found iron pin (1/2" rebar); thence South 56°20'32" East, 110.00 feet to a found iron pin (1/2" rebar); thence South 55°45'16" East, 259.21 feet to a point at the intersection of said Autry Street right-of-way with the Northwesterly right-of-way line of Southern Railroad (200' R/W); thence along said Railroad right-of-way, 310.93 feet along the arc of a curve to the right having a radius of 2710.81 feet and a chord bearing and distance of South 34°19'44" West, 310.76 feet to an iron pin set; thence leaving said right-of-way following the line of lands now or formerly of Patricia H. Kelly, passing through a 4"X4" concrete monument found on said line (6.43 feet), North 54°00'18" West, 215.00 feet to an iron pin set; thence South 41°39'14" West, 114.00 feet to an iron pin set; thence South 53°58'56" East, 215.00 feet to an iron pin set on the right-of-way of said Southern Railroad; thence, following said right-of-way 215.38 feet along the arc of a curve to the right having a radius of 2778.96 feet and a chord bearing and distance of South 43°01'43" West, 215.33 feet to a point of compound curve; thence 193.67 feet along the arc of a curve to the right (passing through a found 1" open top pipe, 34.12 feet along said arc) having a radius of 2607.52 feet, and a chord bearing and distance of South 47°26'50" West, 193.63 feet to a point of compound curve; thence 188.57 feet along the arc of a curve to the right, having a radius of 2295.32 feet, and a chord bearing and distance of South 52°04'06" West, 188.52 feet to an iron pin set on the line of lands now or formerly of Rock-Tenn. Company; thence along said line the following courses and distances: North 42°57'30" West, 348.29 feet to a point; thence North 47°02'30" East, 126.00 feet to a point; thence North 42°57'30" West, 143.15 feet to an iron pin set; thence South 49°37'22" West, 43.80 feet to an iron pin found (1/2" rebar); thence North 37°56'08" West, 98.82 feet to an iron pin set on the Southeasterly right-of-way of aforesaid West Peachtree Street; thence along said right-of-way the following courses and distances: North 45°10'05" East, 225.72 feet to an iron pin set; thence North 43°24'25" East, 256.11 feet to an iron pin set; thence North 42°46'03" East, 149.43 feet to an iron pin set; thence North 41°32'02" East, 163.39 feet to an iron pin set at the **POINT OF BEGINNING**.

Containing a computed 12.166 Acres of land.

8K42690PG0057

EXHIBIT "B"

Additional Property Which May Unilaterally  
Be Submitted To This Declaration by Declarant

All that tract or parcel of land lying and being in Land Lots 243, 244, 253 and 254 of the 6th District, City of Norcross, Gwinnett County, Georgia.

BK42690PG0058

EXHIBIT "C"

Bylaws of Norcross Downtown Residential Association, Inc.

BK42690PG0059

EXHIBIT "D"  
Property Description – Rock-Tenn Parcel