

After recording, return to:
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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
FIELDSTONE SUBDIVISION

GEORGIA, WHITFIELD COUNTY.

This Declaration of Covenants, Conditions and Restrictions for **FIELDSTONE SUBDIVISION** is made this 20th day of June, 2005, by Manley Development, LLC, a Georgia limited liability company, hereinafter referred to as the “Declarant”.

WHEREAS, Declarant is the owner of real estate lying and being in Land Lot 36 of the 12th District and 3rd Section of Whitfield County, Georgia, as shown by plat of Fieldstone Subdivision by Joseph R. Evans, GRLS No. 2168, dated February 1, 2005, recorded in Plat Cabinet D, Slide 271, in the office of the Clerk of the Superior Court of Whitfield County, Georgia (“Plat”); and

WHEREAS, it is to the interest, benefit and advantage of the Declarant and of each person who shall hereafter purchase any lot in said subdivision as depicted on the above referenced plat (“Lot”) that protective covenants governing and regulating the use and occupancy of the same be established;

NOW, THEREFORE, in consideration of the benefits to be derived by the Declarant and the subsequent owners of any lots in said subdivision, the Declarant does hereby declare the following

protective covenants to apply to all of said lots and to all persons owning said lots, to become effective immediately and to run with the land and be binding on all persons claiming through the Declarant:

1. DEFINITIONS

(a) "Declarant" shall mean and refer to Manley Development, LLC.

(b) "Association" shall mean and refer to **Fieldstone Homeowners Association of Whitfield, Inc.**, a Georgia corporation, its successors and assigns.

(c) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot, including contract sellers and excluding those having such interest merely as security for the performance of an obligation.

(d) "Lot" shall mean and refer to any numbered plot of land comprising a single dwelling site designated on any plat of survey recorded in the Office of the Clerk of the Superior Court of Whitfield County, Georgia, now or hereafter made subject to this Declaration.

(e) "Common Property" shall mean all real property, together with all improvements and personal property located thereon or fixtures affixed thereto, owned by the Declarant or the Association for the common use and enjoyment of the Owners.

(f) "Mortgage" shall include deed to secure debt and any and all other similar instruments given to secure the payment of an indebtedness.

2. LAND USE.

(a) Each lot shall be used exclusively for single family residential purposes. No commercial activity may be conducted thereon unless that business activity does not increase traffic within the subdivision, does not increase the burdens on the common property or the Association, and is not detectible by sight, sound or smell from the exterior of the residence. There shall be no more than one single family dwelling per lot as shown on the recorded subdivision plat.

(b) No activity which produces noxious or offensive noises, smells, nor views may be conducted upon any lot or portion thereof.

(c) No inoperable or commercial vehicles shall be parked in public view, provided that this prohibition shall not apply to service vehicles making service calls nor to vehicles involved in construction to or repairs of improvements located on subject property.

(d) There shall be no quarrying, mining, nor any oil, gas or mineral exploration, extraction, or other operations upon said property.

(e) No animals except dogs, cats, fish, and indoor birds, all of which shall be used exclusively as household pets, may be kept on any lot. Pets outside the dwelling must be kept in a fence or on a leash at all times. No more than two mammals may be kept on any lot.

(f) No portion of the property may be used to store garbage or refuse of any kind.

(g) No structure of a temporary nature nor any outbuilding shall be used as a residence at any time.

(h) No sign shall be displayed to the public view except (a) one professional sign of not more than five (5) square feet advertising the property for sale, or naming the builder during the construction of improvements on the property; (b) signs erected by Declarant; and (c) professional security signs no larger than 16 square inches.

(i) No firearms may be used upon the property.

(j) There shall be no daily, overnight, nor long term parking on the streets of the subdivision. Vehicles may be parked only on paved surfaces except during construction or maintenance activities.

(k) There shall be no storage of machinery, equipment, recreational equipment or vehicles other than personal vehicles visible from the street on which the lot fronts.

(l) Except at the sole and exclusive option of Declarant, no Lot or portion thereof may be used for street or road purposes or to provide access, ingress or egress for any other Lot or for any property not subject to this Declaration.

(m) Only Lot 21 as shown on the Plat and no other Lot may access directly onto Mt. View Drive.

(n) Resubdivision of the Lots shown on the Plat shall be permitted only if the same does not operate so as to permit the construction of more than one single-family dwelling per each numbered Lot shown on the Plat.

3. ARCHITECTURAL CONTROL COMMITTEE

(a) The Architectural Control Committee ("ACC") shall consist of the Members of Declarant for so long as Declarant controls the Association, and thereafter shall be composed of members appointed by the Association in accordance with its by-laws. The majority of the committee may appoint a single representative to act for it.

(b) No structure, including but not limited to residence, storage buildings, mailboxes, retaining walls and fences, shall be built, erected, installed or altered until the construction plans, specifications, location, lot clearing and grading plans have been approved by the Architectural Control Committee, using compatibility of design and materials with the landscape and existing structures and the impact of location, clearing and grading activities on other lots as criteria. Nothing herein shall be construed as giving the ACC power to grant variances from the provisions of this Declaration except for the powers reserved by Declarant in Section 9.

(c) The ACC's approval or disapproval as required by this Declaration shall be in writing. If the written approval or disapproval is not delivered to the applicant at the address provided in the application for approval within thirty days after submission of all information required by the ACC, or in

any event if no suit to enjoin construction has been commenced prior to completion thereof, approval will not be required and the related covenants shall be deemed to have been complied with. No approval shall be implied if the applicant does not provide an address for notification in the application for approval and no waiver shall be implied hereunder for any provision not requiring action by the ACC.

(d) Any dispute or question pertaining to classification of architectural type, correct computation of square footage of heated living area, or any other matter in dispute or question under this Declaration shall be decided by the Architectural Control Committee, whose decision or determination shall be conclusive and binding upon all parties.

4. BUILDING REQUIREMENTS.

(a) There shall be no mobile homes or modular homes placed on the property; provided, however, that Declarant may place a temporary movable structure for its use as offices during the period of development of the subdivision.

(b) No building shall be erected on any lot nearer than 25 feet to the front or any street line, or nearer than 10 feet to any side or rear line; provided, however, that in the event of conflict in the location of the building setback lines between this declaration and the recorded subdivision plat, the subdivision plat shall control. The Declarant shall have the authority to reduce the minimum setback lines for so long as he owns any lots. An interior setback line may be reduced by the written agreement of the owner wishing the reduction and the adjoining property owner, together with the Declarant for so long as it owns any lots in the subdivision.

(c) A dwelling shall have a minimum square footage of 2200 square feet of heated floor space. The ground floor of any multi-story building shall have a minimum of 1500 square feet. Basements, porches, garages, and area having clear headroom of less than five (5) feet shall not be included in the calculation of heated living area for purposes of this requirement.

(d) All dwellings must include a garage for not less than two (2) and no more than four (4) cars. Garage shall be defined as a covered building having three fully enclosed sides.

(e) All auxiliary structures, including fences, storage buildings, swimming pools, and antennas, including satellite dishes, and installed recreational equipment shall be no closer to the street on which the house fronts than the rear corners of the house; provided, however, that a basketball pole, backboard and goal may be installed near the Lot's driveway.

(f) All swimming pools must be enclosed by a fence. There shall be no above-ground pools.

(g) Retaining walls shall be built of masonry materials comparable to the materials used in construction and finishing of the dwelling.

(h) Construction of a dwelling must be completed within eighteen months of commencement of construction. "Commencement" shall mean the earlier of the beginning of construction or the date of

issuance of a building permit.

(i) Construction standards must equal or exceed those established by the State of Georgia minimum standard building codes as set forth in O.C.G.A. Section 8-2-20 or subsequent amendments thereto.

(j) All homes shall be “total electric homes” meaning that the primary energy source for heating, cooling, cooking and generation of hot water shall be electricity.

5. APPEARANCE STANDARDS.

(a) There shall be no exposed concrete or concrete block on any exterior wall above ground level.

(b) All foundations shall be fully enclosed and finished with rock or brick except for decks on the rear of the house. To prevent staining, straw shall be placed around the foundations immediately upon the installation of the finish of rock or brick on the foundation walls and shall be maintained during the construction process until dirt is covered by landscaping.

(c) All driveways must be of either asphalt paved to a compacted depth of not less than 1-1/2 inches or concrete not less than 4 inches thick. All driveways shall be not less than 12 feet wide and shall run from the pavement line on the street on which the lot fronts to the garage.

(d) Each driveway must include asphalt or concrete return corners at the intersection of the driveway with the street, which shall be joined in a workmanlike manner to the curbing.

(e) No structure shall be placed forward of the front building setback line.

(f) Where possible garage doors shall not be parallel to the street on which the residence fronts. Garage doors shall remain closed when the openings are not in use.

(g) Replacement mailboxes shall be approved prior to installation by the ACC and shall be of the same type and color as originally installed.

(h) Only brick, stone, or stucco, used with or without cedar or redwood siding or shakes or other siding approved by the ACC, shall be used to finish the exterior walls of the house. Concrete blocks may not be used for exterior finished walls on any structure.

(i) Utilities must be installed underground from the street to the dwelling and propane storage tanks must be installed underground.

(j) No fence of any kind shall be erected, maintained or altered on any lot without the prior written approval by the ACC of the specifications for such fence. There shall be no chain link, woven, or metal fences and all fences shall be a maximum 6 foot height and no closer to any road than the back wall of primary structure.

(k) Any lawn in the front of a dwelling and on the sides to the rear corners of a dwelling

must be sod.

- (l) The minimum roof pitch on any dwelling shall be 8/12.

6. MAINTENANCE OF LOTS.

(a) Each lot, whether vacant or occupied, shall be maintained in a neat and attractive condition.

(b) Each lot owner shall be responsible for soil erosion control during any construction on the property and shall hold Declarant harmless from any loss or damage as a result of lot owner's failure to comply with the requirements of any applicable law, regulation or ordinance. Each lot owner shall be liable for damage to streets caused by construction activities on his lot.

7. EASEMENTS.

(a) Easements for drainage and utilities are reserved as shown on the recorded subdivision plat and along the front 10 feet and rear 5 feet of each lot.

(b) For the prevention of erosion, grass or other vegetation shall be maintained by each lot owner in the drainage areas shown on the subdivision plat.

(c) Drainage flow shall not be obstructed or diverted.

(d) Buffer areas as shown on the subdivision plat shall be preserved and maintained.

(f) The Association shall have a perpetual easement for access to street lights, to the fence along entry to the subdivision, and the landscaped area along the entry fence for maintenance, repairs, and replacement.

(g) Every Owner shall have a right and easement of enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(1) the right of the Association to charge admission and other fees for the use of any recreational facility situated on the Common Property. No such admission charge or other fee shall be enforceable unless agreed to by at least two-thirds (2/3) of the Owners who are Class A members of the Association and by Declarant so long as it is a Class B member of the Association;

(2) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(3) the right of the Association, acting by and through its Board of Directors, to adopt and publish rules and regulations governing the use of the Common property and the personal conduct of the members and their assignees thereon, which rules and regulations may include without limitation a limit upon the number of guests which a member may authorize to use the Common Property;

(4) the rights of all other Association members to use and enjoy the Common Property.

(5) Any Owner may delegate, in accordance with the Association By-Laws, his right of enjoyment to the Common Property and facilities to the members of his family, his tenants and guests; provided, however, the rights and privileges of such persons are subject to suspensions to the same extent as those of the Owner.

8. MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

(a) Declarant and every Owner shall be a member of the Association. Membership shall be automatic and shall be appurtenant to and may not be separated from ownership of any Lot.

(b) Subject to the following provisions of this Section 2, the Association shall have two classes of voting membership: Class A and Class B.

Class A. Class A members shall be all those persons holding an interest required for membership as specified in Section 1 of this Article III with the exception of Declarant. Class A membership shall be a non-voting membership except on such matters and in such events as are hereinafter specified. Class A members shall be entitled to full voting privileges at such time as the Class B member no longer owns primarily for sale any Lot now or hereafter subjected to this Declaration, or at such time as the Class B member may so designate by notice in writing delivered to the Board of Directors of the Association, whichever shall first occur. Before the earlier of these events, Class A members shall be entitled to vote only on (1) any proposal to change the method of calculating the amount of the annual assessments to be levied by the Association, (2) any proposal that a special assessment be levied by the Association, (3) any proposal to add additional properties to the jurisdiction of the Association where approval of the Association shall be required, (4) any proposal to dedicate or transfer all or any part of the Common Property to any public agency or authority, (5) any proposal of merger, consolidation or dissolution, and (6) any proposal to amend the Articles of Incorporation of the Association.

When entitled to vote, Class A members shall be entitled to one vote for each Lot owned. When more than one person owns a Lot, all such persons shall be Class A members and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. In the event of disagreement among such persons and an attempt by two or more of them to cast such vote or votes, such persons shall not be recognized and such vote or votes shall not be counted.

Class B. Declarant shall be the sole Class B member. Class B membership shall be a full voting membership and, during its existence, the Class B member shall be entitled to vote on all matters and in all events. The Class B member shall be entitled to one vote plus such number of votes as

it would be entitled to at any particular time if it were a Class A rather than a Class B member. The Class B membership shall terminate and cease to exist at such time as Declarant no longer owns primarily for sale any Lot now or hereafter subjected to this Declaration, or at such time as Declarant shall so designate by notice in writing delivered to the Board of Directors of the Association, whichever shall first occur. From and after the date on which the Class B membership shall so terminate and cease to exist, the Class B member shall be and become a Class A member insofar as it may then hold any interest required for membership by Section 1 of this Article, in which event it shall be and become entitled to such number of votes as would then be allotted to other Owners of such interests.

(c) Subject to the provisions of Section 2 of Article VII hereof, all matters concerning meetings of members of the Association, including the time within which and the manner in which notice of any of said meetings shall be given to said members, and the quorum required for the transaction of business at any of said meetings shall be as specified in the By-Laws of the Association, as amended from time to time, and by law.

9. ASSESSMENTS

(a) **Purpose of Assessments.** The annual assessments provided for herein shall be levied, spent and used by the Association to further any corporate purpose as set forth in the Association's Articles of Incorporation, as amended from time to time, or pursuant to the valid exercise of any corporate power as set forth in said Articles of Incorporation, as amended from time to time.

(b) **Creation of the Lien and Personal Obligation for Assessments.** Each Lot now or hereafter subjected to this Declaration is subject to a lien and permanent charge in favor of the Association for the annual assessments set forth in Section C of this Article. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall be a permanent charge and continuing lien upon the Lot against which it relates, and shall also be the joint and several personal obligation of each Owner of such Lot at the time the assessment fell due, and each such Owner hereby covenants, and by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay the same to the Association as and when due.

(c) **Amount of Assessments.** The annual assessments shall be payable to the Association on a September 1 to August 31 fiscal year basis and shall begin with the fiscal year September 1, 2006, to August 31, 2006. For the fiscal year beginning September 1, 2006, the annual assessment shall be \$150.00 for each Lot now or hereafter made subject to this Declaration. If it is determined that the annual assessment is excessive, or is insufficient to produce sufficient funds to satisfy the maintenance costs and current needs of the Association, then at the regularly scheduled annual meeting or at a called special meeting of the Association members (all actions being taken pursuant to the

terms of the Articles of Incorporation and By-Laws of the corporation) then the annual assessment may be increased or decreased, as the case may be, in an amount sufficient to satisfy costs and needs of the Association.

(d) Due Date of Annual Assessments. The annual assessments provided for in this Article shall be due and payable to the Association as to each Lot conveyed by Declarant to an Owner, as follows: With respect to conveyances by Declarant to an Owner after September 1 of any year, the annual assessment for the fiscal year in which Declarant (or contractor, pursuant to Section 7 of this Article) shall convey a Lot to an Owner shall be adjusted according to the number of days remaining in the fiscal year and shall be payable on the date of conveyance. The due date of subsequent annual assessments shall be September 1 of each year.

(e) Effect of Non-Payment of Assessment: The Personal Obligation of the Owner; The Lien; Remedies of Association. If an assessment is not paid on the date when due, as herein provided, then such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall be a charge and continuing lien on the Lot to which it relates, and shall bind such property in the hand of the then Owner, his heirs, legal representatives, successors and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation and shall not pass as a personal obligation to his successor in title unless expressly assumed by such successor in title. If such successor in title assumes such prior Owner's personal obligation, such prior Owner shall nevertheless remain as fully obligated as before to pay to the Association any and all amounts which he was obligated to pay immediately preceding the transfer, and such prior Owner and such successor in title assuming such liability shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such prior Owner and such successor in title creating the relation of principal and surety as between themselves or creating any relationship as between themselves other than one by virtue of which such prior Owner and such successor in title would be jointly and severally liable to pay such amounts.

Any such assessment not paid on the date when due, as hereinabove provided, shall bear interest from the date of delinquency at the maximum rate allowable under Georgia law, and the Association may bring legal action against the Owner personally obligated to pay the same and/or foreclose its lien against the Lot to which it relates. In either of such events, the Association shall also be entitled to recover attorney's fees in an amount equal to fifteen percent (15%) thereof, and all costs of collection. Each Owner, by his acceptance of a deed or other conveyance to a Lot, vests in the Association or his agent the right and power to bring all actions against him personally for the collection of such charges as a debt and to foreclose the aforesaid lien in any appropriate proceeding in law or in equity. The Association shall have the power to bid in the Lot at any foreclosure sale and to acquire, hold, lease, mortgage and convey

the same. No Owner may be relieved from liability for the assessments provided for herein by non-use of the Common Property or by abandonment of his Lot or otherwise.

(f) Subordination of the Charges and Liens to Mortgages.

(1) The lien and permanent charge of the annual assessment (together with interest thereon and costs of collection) authorized herein with respect to any Lot is hereby made subordinate to the lien of any mortgage placed on such Lot if, but only if, all such assessments with respect to such Lot having a due date on or prior to the date such mortgage is filed for record have been paid. The lien and permanent charge hereby subordinated is only such lien and charge as relates to assessments authorized hereunder having a due date subsequent to the date such mortgage is filed for record and prior to the satisfaction, cancellation or foreclosure of such mortgage or the sale or transfer of the mortgaged property pursuant to any proceeding in lieu of foreclosure or the sale or transfer of the mortgaged property pursuant to a sale under power contained in such mortgage.

(2) Such subordination is merely a subordination and shall not relieve the Owner of the mortgaged property of his personal obligation to pay all assessments coming due at a time when he is the Owner; shall not relieve such property from the lien and permanent charge provided for herein (except to the extent a subordinated lien and permanent charge is extinguished as a result of such subordination as against a mortgagee or such mortgagee's assignee or transferee by foreclosure or by sale or transfer in any proceeding in lieu of 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 such property of any personal obligation, or relieve such property or the then and subsequent Owners from liability for any assessment provided for hereunder coming due after such sale or transfer.

(3) Notwithstanding the foregoing, the Association may at any time, either before or after any mortgage or mortgages are placed on such property, waive, relinquish or quitclaim in whole or in part the right of Association to assessments provided for hereunder with respect to such property coming due during the period while such property is or may be held by a mortgagee or mortgagees pursuant to such sale or transfer.

(g) Exempt Property. Each lot now or hereafter made subject to this Declaration shall be exempt from the assessments, charges and liens created herein while owned by Declarant or while owned by an individual, corporation, or partnership engaged primarily in the business of building housing units which individual or entity purchases the Lot from Declarant for the sole purpose of construction thereon for eventual sale a single-family residence through such contractor's own efforts and those of his agents, employees and subcontractors. All Common Property, including any Lot which may be designated for use as such by Declarant, shall be exempt from the assessments, charges and liens created therein.

10. ENFORCEMENT OF MAINTENANCE OF LOTS

(a) The grounds of each Lot (whether vacant or occupied) shall be maintained in a neat and attractive condition.

(b) Upon the failure of any Owner to maintain his Lot (whether vacant or occupied) in a neat and attractive condition, the Board of Directors of the Association, its designated committee, or the authorized agents or employees of the Board or its designated committee, may, after sixty (60) days' notice to such Owner, enter upon such Lot and have the grass, weeds and other vegetation cut when, and as often as, the same is necessary in its judgment, and may have dead trees, shrubs and other plants and trash removed therefrom.

(c) Such Owner shall be personally liable to the Association for the cost of any cutting, clearing, maintenance or removal described in subparagraph (b) of this Article determined by the Board of Directors, or its designated committee, to be necessary, and the liability for amounts expended for such cutting, clearing and maintenance shall be a permanent charge and lien upon such Lot, enforceable by the Association by any appropriate proceeding in law or in equity. All costs incurred by the Association on behalf of such Owner shall be reasonable.

(d) Although notice given as hereinabove provided shall be sufficient to give the Board of Directors, or its designated committee, or the authorized agents or employees of the Board or its designated committee, the right to enter upon such Lot and the work required shall be only between the hours of 7:00 a.m. and 6:00 p.m. on any day except Sunday.

11. ADMINISTRATION

The maintenance, repair, replacement, and operation of the Common Property shall be the responsibility of the Association.

12. RESERVATION OF RIGHTS BY DECLARANT

(a) It is contemplated by Declarant that certain lands shown on a plat of survey which includes Lots now or hereafter made subject to this Declaration may be developed or used as recreational areas, including parks and playgrounds, or as greenbelts, open spaces or walkways and unless and until such time as Declarant shall convey by deed such property to the Association, neither the development or use of such property for any of such purposes shall constitute or be construed by implication to be a covenant, restrictions, or representation that such property is dedicated or otherwise permanently committed for any of such purposes, the possible sale of such property for residential purposes, or the use thereof for other purposes, being expressly contemplated and reserved by Declarant.

(b) Declarant shall at all times and from time to time have the right to delegate or assign to the Association any and all functions or rights reserved to Declarant under this Declaration. Any function or

right so delegated or assigned to the Association may be exercised as the Board of Directors of the Association shall determine.

(c) For so long as it owns any lot in the subdivision, Declarant reserves the power to grant variances from the terms of this Declaration which do not depart from the terms hereof in a manner materially damaging to the use and enjoyment of lots owned by anyone other than Declarant.

(d) Declarant and its successors and/or assigns, shall at all times and from time to time have the right to submit additional property to this Declaration to be developed as part of Fieldstone Subdivision by filing for record a supplement to this Declaration.

13. ENFORCEMENT

(a) These covenants shall run with the land and be binding on all persons claiming under Declarant for a period of 20 years from the date of this instrument. The covenants shall automatically renew as allowed by law until amended or terminated by written agreement of Declarant if it is the owner of any property subject hereto and of the owners of record of 75% of the lots in the subdivision.

(b) These covenants may be enforced by a proceeding at law or in equity brought by any lot owner or the Association. Any failure to enforce any provision of this Declaration shall in no event be deemed a waiver of the right to do so in the future.

(c) Invalidation of any covenant or restriction set forth herein shall not affect any other provision and those remaining provisions shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has executed this instrument under seal on the date shown above.

MANLEY DEVELOPMENT, LLC

By: _____ (SEAL)
Larry B. Manley, Sole Member and Manager

Signed, sealed and delivered
in the presence of:

Witness

Notary Public

