

Upon recording return to:

JW Homes, LLC  
Attn: Legal Department  
4125 Atlanta Road  
Smyrna, GA 30080

**DECLARATION OF PROTECTIVE COVENANTS**

**FOR**

**OVERTURE AT ENCORE**

## TABLE OF CONTENTS

		<u>Page</u>
1.	DEFINITIONS.....	1
2.	PROPERTY SUBJECT TO THIS DECLARATION.....	4
	2.1. Name of Community.....	4
	2.2. Property Hereby Subjected to this Declaration.....	4
	2.3. Other Property.....	4
3.	ASSOCIATION MEMBERSHIP AND VOTING RIGHTS .....	4
	3.1. Membership .....	4
	3.2. Voting .....	5
	3.3. Management of Association .....	5
4.	ASSESSMENTS.....	5
	4.1. Purpose of Assessments.....	5
	4.2. Creation of the Lien and Personal Obligation for Assessments .....	5
	4.3. Computation; Annual Assessment.....	6
	4.4. Special Assessments .....	6
	4.5. Specific Assessments .....	7
	4.6. Lien for Assessments .....	8
	4.7. Effect of Nonpayment of Assessments; Remedies of the Association .....	8
	4.8. Date of Commencement of Assessments/ Assessment Obligation of Declaration.....	9
	4.9. Capitalization of Association.....	10
	4.10. Budget Deficits during Declarant Control .....	11
	4.11. Estoppel Letter .....	11
5.	MAINTENANCE .....	11
	5.1. Maintenance of Units.....	11
	5.2. Maintenance of Common Area.....	14
	5.3. Maintenance by Unit Owners .....	16
	5.4. Liability.....	17
	5.5. Limited Common Area .....	18
	5.6. Party Walls and Party Fences .....	18
	5.7. Gate System .....	18

6.	USE RESTRICTIONS AND RULES .....	20
6.1.	General.....	20
6.2.	Use of Units .....	20
6.3.	Signs.....	22
6.4.	Vehicles.....	22
6.5.	Occupants Bound .....	24
6.6.	Animals and Pets.....	24
6.7.	Nuisance.....	25
6.8.	Unsightly or Unkempt Conditions.....	25
6.9.	Antennas and Satellite Dishes.....	26
6.10.	Miscellaneous Items Outside a Unit. ....	26
6.11.	Tree Removal.....	27
6.12.	Lighting.....	27
6.13.	Drainage.....	27
6.14.	Sight Distance at Intersections.....	28
6.15.	Garbage.....	28
6.16.	Subdivision of Unit.....	28
6.17.	Firearms and Fireworks .....	28
6.18.	Solar Devices .....	28
6.19.	Fences .....	29
6.20.	Exterior Colors.....	29
6.21.	Detached Structures .....	29
6.22.	Entry Features and Street Signs .....	29
6.23.	Swimming Pools .....	29
6.24.	Garage Sales.....	29
6.25.	Window Coverings; Window Treatments .....	29
6.26.	Use of Common Area .....	30
6.27.	Prohibition of Damage.....	30
6.28.	Window Air-Conditioning Units .....	30
6.29.	Traffic Regulations .....	31
6.30.	Flags .....	31
6.31.	Use of Limited Common Area.....	31
6.32.	Ponds, Creeks and Streams .....	31
6.33.	Municipal and Utility Agreements.....	32
7.	ARCHITECTURAL STANDARDS .....	34
7.1.	General.....	34
7.2.	Architectural Review Committee .....	35
7.3.	Inspection Rights .....	35
7.4.	Owner Responsibilities .....	35
7.5.	New Construction .....	35
7.6.	Limitation on Liability.....	35
7.7.	Declarant Exclusion .....	36

8.	LEASING .....	36
8.1.	General .....	36
8.2.	Maximum Available Leases .....	37
8.3.	Revocation of Leasing Permit.....	37
8.4.	Waiting List .....	37
8.5.	Hardship Leasing .....	37
8.6.	Leasing Provisions.....	38
8.7.	Mortgagee Exemption.....	40
8.8.	Leasing Rights Reserved by Declarant.....	40
9.	INSURANCE AND CASUALTY LOSSES .....	40
9.1.	Insurance Obtained by Association .....	40
9.2.	Damage and Destruction - Property Insured by Association.....	43
10.	ANNEXATION AND WITHDRAWAL OF PROPERTY .....	44
10.1.	Unilateral Annexation by Declarant .....	44
10.2.	Other Annexation.....	45
10.3.	Withdrawal of Property.....	45
10.4.	Additional Covenants, Restrictions and Easements.....	45
11.	EASEMENTS .....	46
11.1.	Easements for Encroachment and Overhang .....	46
11.2.	Easements for Use and Enjoyment .....	46
11.3.	Association Easements for Utilities .....	48
11.4.	Easements for Association Maintenance .....	48
11.5.	Easements for Maintenance and Repair.....	49
11.6.	Easements for Entry.....	49
11.7.	Easements for Entry Features and Street Signs .....	49
11.8.	Easements for Drainage .....	49
12.	CONDEMNATION .....	50
13.	MORTGAGEE PROVISIONS.....	50
13.1.	General.....	50
13.2.	Notices of Action .....	50
13.3.	No Priority .....	51
13.4.	Notice to Association.....	51
13.5.	Amendments by Board .....	51
13.6.	Applicability of Section 13 .....	51
13.7.	Failure of Mortgagee to Respond .....	51

14.	USE OF RECREATIONAL FACILITIES BY NONMEMBERS .....	51
14.1.	Grant of Rights to Non-Members .....	51
14.2.	Payment of Fees by Non-Members; Remedies.....	52
14.3.	Capacity of Facilities .....	52
14.4.	No Liability to Declarant .....	52
15.	AMENDMENTS .....	52
15.1.	Unilateral Amendments by Declarant.....	52
15.2.	Amendments During Declarant Control Period.....	53
15.3.	Amendments by the Members .....	53
15.4.	General.....	53
16.	ENFORCEMENT AND REMEDIES .....	54
16.1.	Enforcement.....	54
16.2.	Fining Procedure.....	54
16.3.	Self-Help.....	55
17.	GENERAL PROVISIONS .....	55
17.1.	Duration .....	55
17.2.	Gender and Grammar.....	56
17.3.	Severability .....	56
17.4.	Captions .....	56
17.5.	Indemnification .....	56
17.6.	Books and Records .....	56
17.7.	Financial Statements .....	57
17.8.	Notice of Sale .....	57
17.9.	Board Agreements and Actions Binding on All .....	57
17.10.	Variances.....	57
17.11.	Litigation.....	58
17.12.	Implied Rights.....	58
17.13.	Security .....	58
17.14.	No Discrimination.....	59
18.	DECLARANT RIGHTS .....	59
18.1.	Conveyance of Property to Association; No Implied Rights.....	59
18.2.	Construction and Sale Period.....	60
18.3.	Assignment of Declarant Rights .....	61

**TABLE OF EXHIBITS**

Exhibit   Name

- “A”      Property Initially Subject to Declaration
- “B”      Additional Property which can be Unilaterally Subject to Declaration by Declarant
- “C”      Bylaws of Overture at Encore Neighborhood Association, Inc.

**DECLARATION OF PROTECTIVE COVENANTS**

**FOR**

**OVERTURE AT ENCORE**

THIS DECLARATION OF PROTECTIVE COVENANTS FOR OVERTURE AT ENCORE (“Declaration”) is made on the date hereinafter set forth by JW HOMES, LLC, a Delaware limited liability company (hereinafter sometimes called “Declarant”).

**Background Statement**

Declarant is the owner of the real property described in Section 2.2 of this Declaration.

Declarant desires to subject the real property described in Section 2.2 to the provisions of this Declaration to create a residential community of single-family housing and to provide for the subjecting of other real property to the provisions of this Declaration.

**Declaration**

NOW, THEREFORE, Declarant hereby declares that the real property described in Section 2, including the improvements constructed or to be constructed thereon, is hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens, hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property hereby or hereafter made subject hereto, shall be binding on all persons having any right, title or interest in all or any portion of the real property now or hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title and assigns, and shall inure to the benefit of each and every owner of all or any portion thereof.

**Section 1**  
**Definitions**

Unless the context shall prohibit, certain words used in this Declaration shall be defined as follows:

- (a) “Association” shall mean and refer to Overture at Encore Neighborhood Association, Inc., a nonprofit Georgia corporation, its successors and assigns.
- (b) “Board of Directors” or “Board” of the Association shall be the appointed or elected body, as applicable, having its normal meaning under Georgia corporate law, responsible for the operation, management and administration of the Community.

- (c) “Bylaws” shall refer to the Bylaws of Overture at Encore Neighborhood Association, Inc., attached to this Declaration as Exhibit “C” and incorporated herein by this reference.
- (d) “Common Area” shall mean any and all real and personal property and easements, leaseholds and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners.
- (e) “Community” shall mean and refer to that certain real property and interests therein described in Exhibit “A”, attached hereto, and (i) such additions thereto as may be made by Declarant (or its Mortgagee or transferee, as provided in the Declaration) of all or any portion of the real property described in Exhibit “B”, attached hereto; and (ii) such additions thereto as may be made by the Association (as provided in the Declaration) of other real property.
- (f) “Community-Wide Standard” shall mean the standard of conduct, maintenance or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association, but must be consistent with the Community-Wide Standard originally established by the Declarant.
- (g) “Declarant” shall mean and refer to JW Homes, LLC, a Delaware limited liability company, and its successors-in-title and assigns.
- (h) “Declarant Control Period” means the period beginning on the effective date of this Declaration and expiring on the later of (i) no later than 6 months after the date on which Declarant no longer owns any property for development and/or sale in the Community (that is, 100% of the Units planned by Declarant to be part of the Community shall have been conveyed to Owners for occupancy as a residence), and (ii) the date on which Declarant no longer has the right unilaterally to annex additional property to the Community under the terms of Section 10. Notwithstanding the preceding, the Declarant may unilaterally surrender all or any portion of its rights and obligations as Declarant, including the right to appoint and remove directors and officers, at any time by filing an amendment or termination to such effect in the Fulton County, Georgia land records.
- (i) “Gate System” means the gates, whether mechanical or manual, and fences that limit or restrict vehicular and pedestrian access, ingress and egress to and from the Community from public roads. This specifically includes the mechanical gate to be built at the entrance of the Community from Encore Parkway.
- (j) “Governing Documents” means the Declaration, Bylaws, and the Association’s rules and regulations and any use restrictions established by Declarant or the Association, together any amendments to any of the foregoing.

- (k) “Limited Common Area” means a portion of the Common Area reserved for the exclusive use of those entitled to occupy one or more, but less than all, of the Units, as more particularly described in Section 5.5.
- (l) “Majority” means those eligible votes, Owners or other group as the context may indicate totaling more than 50% of the total eligible number.
- (m) “Mortgage” means any mortgage, deed to secure debt, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.
- (n) “Mortgagee” shall mean the holder of a Mortgage.
- (o) “Occupant” shall mean 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.
- (p) “Owner” shall mean and refer to the record owner, whether one or more Persons, of the fee simple title to any Unit located within the Community, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation.
- (q) “Person” means any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, or other legal entity.
- (r) “Supplementary Declaration” means a supplement to this Declaration which subjects additional property to this Declaration or imposes, expressly or by reference, additional restrictions and obligations on the land described therein, or both.
- (s) “Total Association Vote” means the votes attributable to the entire membership of the Association (including the votes of Declarant) as of the record date for such action, but specifically excluding the votes of any Owners whose voting rights have been suspended as provided herein, 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, 2/3 of the Total Association Vote is required to approve a matter, such matter must receive more than 2/3 of the votes attributable to all existing members of the Association as of the record date for such action (and excluding the votes of any Owners whose voting rights have been suspended as provided herein), whether or not such members are present or represented at the meeting, if any, where such votes are to be cast.
- (t) “Unit” means any plot of land on which will be or has been built a single-family residential dwelling that is attached by one or more party walls to another residential dwelling. Where a Unit is attached by a party wall to one or more

Units, the boundary between such Units shall be a line running along the center of the party wall separating the Units. The ownership of each Unit shall include the exclusive right of use and possession of any and all portions of Limited Common Area assigned to such Unit (which includes the heating and air conditioning units which are appurtenant to and serve each Unit (including, but not limited to, compressors, conduits, wires and pipes) and any driveway, walkway, porch, deck, courtyard, patio, steps, wall, roof, foundation, courtyard, sunroom or any similar appurtenance that may be attached to a Unit when such Unit is initially constructed). Certain appurtenances described above (as initially constructed) may encroach upon the Common Area shall be considered a part of the Unit, maintained as provided in the Declaration, and allowed to encroach upon the Common Area. No such appurtenant structure may be altered, changed or enlarged except in accordance with Section 7, and any other pertinent provisions, of the Declaration.

## Section 2

### Property Subject to this Declaration

**2.1 Name of Community.** The name of the Community is Overture at Encore.

**2.2. Property Hereby Subjected to this Declaration.** The real property described in Exhibit "A" attached hereto and by reference made a part hereof is, by the recording of this Declaration, subject to the covenants and restrictions hereafter set forth and, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied and mortgaged or otherwise encumbered subject to this Declaration.

**2.3. Other Property.** Only the real property described in Section 2.2 is hereby made subject to this Declaration; provided, however, by one or more Supplementary Declarations, Declarant and the Association have the right, but not the obligation, to subject other real property to this Declaration, as provided in Sections 10.1 and 10.2.

## Section 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 that is subject to this Declaration shall be deemed to have a membership in the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate an Owner's membership. No Owner, whether one or more Persons, shall have more than one membership per Unit. If a Unit is owned by multiple Owners, votes and rights of use and enjoyment shall be as provided in this Declaration and in the Bylaws. Membership shall be appurtenant to and may not be separated from ownership of any Unit. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a member or the member's spouse, but in no event shall more than one vote be cast for each Unit owned.

**3.2. Voting.** Members shall be entitled to one vote for each Unit owned. When more than one Person holds an ownership interest in any Unit, the vote for such Unit shall be exercised as those Owners themselves determine and advise the Secretary of the Association prior to any meeting. A vote related to a Unit shall be suspended if more than one Person seeks to exercise it.

**3.3. Management of Association.**

(a) The Association shall be managed by a Board of Directors and officers, who shall be appointed or elected as specified in the Bylaws.

(b) The Board of Directors may employ for the Association a property management company or agent at a compensation established by the Board of Directors, to perform such duties and services as the Board of Directors shall authorize. The Board may also designate the property management company or one or more other parties as a “designee” empowered to perform certain rights or duties of the Board under this Declaration.

(c) Declarant or an affiliate of Declarant may be employed as managing agent or manager.

(d) The term of any management agreement shall not exceed one year and shall be subject to termination by either party, without cause and without penalty, upon not more than 90 days’ written notice.

**Section 4**  
**Assessments**

**4.1. Purpose of Assessments.** The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, welfare, common benefit and enjoyment of the Owners and Occupants of Units, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board.

**4.2. Creation of the Lien and Personal Obligation for Assessments.**

(a) Each Owner of a Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association:

- (i) annual assessments or charges;
- (ii) special assessments, such assessments to be established and collected as hereinafter provided; and
- (iii) specific assessments against any particular Unit which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this Declaration.

(b) All assessments, together with late charges (in an amount determined by the Board from time to time in its sole discretion), and interest on the principal amount due (at a rate not to exceed the lesser of the maximum rate permitted by law or 18% per annum), shall be a charge on the land and a continuing lien upon the Unit against which each assessment is made. As provided in O.C.G.A. Section 44-5-60(e), the obligation for the payment of assessments and fees arising hereunder shall include the costs of collection, including, without limitation, reasonable attorney's fees actually incurred, and the award of attorney's fees shall not be construed in accordance with the provisions of O.C.G.A. Section 13-11(a)(2).

(c) Each assessment, together with late charges, interest, costs of collection and reasonable attorney's fees actually incurred, shall also be the personal obligation of the Person who was the Owner of such 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. Any first Mortgagee taking title through foreclosure proceedings or deed in lieu of foreclosure shall not be liable for the unpaid assessments of the grantor.

(d) Assessments shall be paid at a uniform rate for all similarly situated Units in such manner and on such dates as may be fixed by the Board, which may include, without limitation, acceleration, upon 10 days written notice, of assessments for delinquent amounts.

#### **4.3. Computation; Annual Assessment.**

(a) It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year, which may include a capital contribution or reserve in accordance with a capital budget separately prepared. The Board shall cause the budget and the annual assessment to be levied against each Unit for the year (or portion thereof in the case of the initial budget) to be delivered to each member at least 30 days prior to the due date of such annual assessment (or the first installment thereof). Notwithstanding the foregoing, if the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget has been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year and the annual assessment shall be based on that budget. No vote of the Owners shall be required to approve the budget during the Declarant Control Period.

(b) After the Declarant Control Period, if the Board proposes a budget that increases annual assessments by more than 30% over the previous year's annual assessments, members may request a special meeting pursuant to Section 2.3 of the Bylaws to vote on such proposed budget. The proposed budget shall be deemed approved unless disapproved at the special meeting by a Majority of the Total Association Vote.

**4.4. Special Assessments.** In addition to the other assessments authorized herein, the Association may levy special assessments against all Owners subject to assessment for any expenses that were unbudgeted, unanticipated or in excess of the budget. So long as the total amount of special assessments allocated to each Unit does not exceed \$300.00 in any one fiscal

year, the Board may impose the special assessment without a vote of the members. Except for special assessments levied pursuant to Section 9.2, any special assessment which would cause the amount of special assessments allocated to any Unit to exceed this limitation shall be effective only if approved by a Majority of the Total Association Vote and Declarant (during the Declarant Control Period). Special assessments shall be paid as determined by the Board and may be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

#### **4.5. Specific Assessments.**

(a) The Board shall have the power to levy specific assessments pursuant to this Section 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 or the Board 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.

(b) By way of explanation and not limitation, the following shall constitute specific assessments under the Declaration:

- (i) fines levied pursuant to Section 16.2;
- (ii) the capital contribution set forth in this Section 4.9;
- (iii) the costs of maintenance performed by the Association for which an Owner is responsible under Section 5.1 and 5.3; and
- (iv) the costs of maintenance, repair and replacement to any private road, drive and/or alley.

(c) The Board may also specifically assess Units for the following Association expenses:

- (i) 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;
- (ii) Expenses of the Association which benefit all Units, but which do not provide an equal benefit to all Units, may be specifically assessed equitably among all Units according to the benefit received; and
- (iii) Expenses incurred by the Association which are attributable to or the result of a particular Owner or the Occupants, guests, tenants, invitees or licensees of such Owner may be specifically assessed against the Unit of said Owner.

**4.6. Lien for Assessments.**

(a) All sums assessed against any Unit pursuant to this Declaration, together with late charges, interest, costs of collection and reasonable attorney's fees actually incurred, as provided herein, shall be secured by a lien on such Unit in favor of the Association, and the Association shall be entitled to file such a lien in the Fulton County, Georgia land records. Such lien shall be superior to all other liens and encumbrances on such Unit, except for:

- (i) liens of ad valorem taxes;
- (ii) liens for all sums unpaid on a first Mortgage; or
- (iii) liens for all sums on any Mortgage to Declarant duly recorded in the Fulton County, Georgia land records and all amounts advanced pursuant to such Mortgage and secured thereby in accordance with the terms of such instrument.

(b) All other Persons acquiring liens or encumbrances on any Unit after this Declaration is recorded in the Fulton County, Georgia land records shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

**4.7. Effect of Nonpayment of Assessments; Remedies of the Association.**

(a) All sums (including assessments or installments thereof) assessed against any Unit pursuant to this Declaration which are not paid when due shall be delinquent. Any such sums delinquent for a period of more than 10 days shall incur a late charge in such amount as the Board may from time to time determine. The Board shall be entitled to collect interest on the principal amount due at a rate not to exceed the lesser of the maximum rate permitted by law or 18% per annum.

(b) The Association may cause a notice of delinquency to be given to any member who has not paid within 10 days following the due date. If any such sums are not paid within 30 days after the due date, the Board may accelerate and declare immediately due all such sums (including annual assessments or installments thereof) without any further notice being given to the delinquent Owner, and a lien, as herein provided, shall attach. Such lien shall include all late charges, interest on the principal amount due, costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law.

(c) If any sum assessed against any Unit pursuant to this Declaration remains unpaid after 60 days from the due date, the Association may, as the Board shall determine, institute a lawsuit to collect such amounts and/or to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the

improvement of real property. The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Unit at any foreclosure sale or to acquire, hold, lease, mortgage or convey the same. The Association may also suspend the membership rights of the delinquent Owner, including the right to vote, and the right to use and enjoy the Common Area, and, upon 10 days written notice, the right to receive such services and other benefits as may be provided by the Association. Any suspension shall not affect an Owner's obligation to pay assessments coming due during the period of suspension and shall not affect the permanent lien on such Unit in favor of the Association.

(d) No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Unit or nonuse of the Common Area. No diminution or abatement of any assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or the Bylaws, or for any inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance or order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

(e) As provided in O.C.G.A. Section 44-5-60(e), the obligation for the payment of assessments and fees arising hereunder shall include the costs of collection, including, without limitation, reasonable attorney's fees actually incurred, and the award of attorney's fees shall not be construed in accordance with the provisions of O.C.G.A. Section 13-1-11(a)(2).

(f) All payments shall be applied first to costs and attorney's fees, then to late charges, then interest and then to delinquent assessments.

#### **4.8. Date of Commencement of Assessments/Assessment Obligation of Declarant.**

(a) The assessments provided for herein shall commence as to all Units subject to assessment hereunder upon conveyance of a Unit by the Declarant to a Person other than Declarant or an affiliate of Declarant. All assessments shall be due and payable in a manner and on a schedule as the Board may provide. All assessments shall be rounded up to the nearest dollar and payable as such.

(b) Each Unit owned by Declarant or its respective affiliates which does not contain an occupied residence shall not be subject to any assessment provided for herein.

(c) Any Unit which has been approved by Declarant for use as a model home for marketing and sales purposes shall not be deemed to be occupied for residential purposes and shall not be subject to assessments under this Declaration whether owned by Declarant or any other Person, so long as such Unit is approved for use as a model home and is not occupied for residential purposes.

(d) Notwithstanding anything to the contrary herein, Declarant or its respective affiliates may contribute assessments due from them in services or materials or a combination of services and materials, rather than in money (herein collectively called “in kind contribution”). The amount by which monetary assessments shall be decreased as a result of any in kind contribution shall be the fair market value of the contribution. If the Declarant or its respective affiliates and the Association agree as to the value of any contribution, the value shall be as agreed. If the Association and the Declarant or its respective affiliates cannot agree as to the value of any contribution, the Declarant or its respective affiliates shall supply the Association with a detailed explanation of the services performed and materials furnished, and the Association shall acquire bids for performing like services and furnishing like materials from 3 independent contractors approved by the Declarant or its respective affiliates who are in the business of providing such services and materials. If the Association and the Declarant or its respective affiliates, as the case may be, are still unable to agree on the value of the contribution, the value shall be deemed to be the average of the bids received from the independent contractors.

#### **4.9. Capitalization of Association.**

(a) An initiation fee (sometimes also referred to as a “working capital assessment” or “capital contribution”) must be paid to the Association by or on behalf of any purchaser of a Unit (other than Declarant or its affiliates) upon the transfer or sale of the Unit, as follows:

<b>Purchaser</b>	<b>Maximum Initiation Fee</b>
Initial Owner (the party purchasing from the Declarant, a developer or a builder)	An amount equal to up to 100% of the annual assessment being charged by the Association for the year in which the closing of the transfer or sale of the Unit occurs, as determined by the Board from time to time.
Second and subsequent Owners	An amount equal to up to 100% of the annual assessment being charged by the Association for the year in which the closing of the transfer or sale of the Unit occurs, as determined by the Board from time to time.

(b) This initiation fee set forth in subsection (a) above shall constitute a specific assessment against the Unit, and shall be in addition to, not in lieu of, any other assessments levied on the Unit and shall not in any way be construed as part of or identical to any such assessments or as an advance payment of any such assessments. These initiation fees shall be collected at the closing of the Unit, or if not collected at closing, shall be paid immediately upon demand by the Association. The initiation fee shall be disbursed to the Association for any use which provides a direct benefit to the Community, including, without limitation, covering operating and other expenses (including reserves) incurred by the Association pursuant to the terms of this Declaration and the Bylaws.

(c) No initiation fee under subsection (a) shall be required from the holder of any first Mortgage on a Unit who becomes the Owner of a Unit through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage, but an initiation fee shall be required from the Owner acquiring the Unit from the foreclosing Mortgagee.

**4.10. Budget Deficits during Declarant Control.** For so long as the Declarant has the authority to appoint and remove the directors and officers of the Association, Declarant may, but shall have no obligation to: (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 annual, special and specific assessments collected by the Association in any fiscal year, and such advances may be evidenced by one or more promissory notes from the Association in favor of the Declarant or by appropriate entries in the books and records of Declarant and the Association; or (b) cause the Association to borrow such amount from a commercial lending institution at the then-prevailing rates for such a loan in the local area of the Community.

**4.11. Estoppel Letter.** Any Owner, Mortgagee, or a Person having executed a contract for the purchase of a Unit, or a lender considering a loan to be secured by a Unit, shall be entitled, upon written request, to a statement from the Association or its managing agent setting forth the amount of assessments past due and unpaid, including any late charges, interest, fines, or other charges against that Unit. Such request shall be delivered to the registered office of the Association, and shall state an address to which the statement is to be directed. The Association shall, within 10 business days after receiving a written request, 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 management company, if any, as to the amount of assessments due with respect to a Unit shall be binding upon the Association. The Association may charge a reasonable fee as may be permitted by law as a prerequisite to the issuance of such statement. It is the intent of this provision to comply with O.C.G.A. Section 44-14-15(c), as amended.

**Section 5**  
**Maintenance**

**5.1. Maintenance of Units.**

(a) The responsibility for maintenance, repair and upkeep for each Unit and related components and improvements, the Common Area and the Limited Common Area shall be allocated between the Association and the Unit Owner as follows:

Item	Maintenance, Repair or Upkeep Obligation	Responsible Party	
		Association	Owner
1.0	Structural components (including building foundations and footings, as well as waterproofing above or below grade)		X

Item	Maintenance, Repair or Upkeep Obligation	Responsible Party	
		Association	Owner
<b>2.0</b>	<b>Driveways, walkways, exterior steps:</b>		
2.1	-- Routine cleaning (e.g. sweeping)		X
2.2	-- Periodic cleaning (e.g. pressure washing) which is to be performed for all or a group of Units	X	
2.3	-- All other maintenance or repair		X
<b>3.0</b>	<b>Stoops:</b>		
3.1	-- Routine cleaning (e.g. sweeping)		X
3.2	-- Periodic cleaning (e.g. pressure washing) which is to be performed for all or a group of Units	X	
3.3	-- Periodic painting or staining of visible surfaces (and routine maintenance associated with that work) which is to be performed for all or a group of Units	X	
3.4	-- All other maintenance or repair	X	
<b>4.0</b>	<b>Heating and air conditioning units</b> or similar equipment, including and pipes, wires, or conduits:		
4.1	-- If serving only one Unit		X
4.2	-- If serving multiple Units	N/A	N/A
<b>5.0</b>	<b>Lighting fixtures:</b>		
5.1	-- Located outside a Unit or in a garage, if it is controlled by only one Unit		X
5.2	-- Located outside a Unit, if it is controlled by the Association	X	
<b>6.0</b>	<b>Exterior surfaces</b> of the Unit (excluding doors, windows, shutters):		
6.1	-- Routine cleaning		X
6.2	-- Periodic maintenance (e.g. pressure washing) of visible surfaces which is to be performed for all or a group of Units	X	
6.3	-- Periodic painting of visible surfaces (and routine maintenance associated with that work) which is to be performed for all or a group of Units	X	
6.4	-- All other maintenance or repair	X	
<b>7.0</b>	<b>Doors made primarily of wood and door frame</b> (including garage doors, if made of wood):		
7.1	-- Routine cleaning		X
7.2	-- Annual maintenance (e.g. painting, staining, caulk) of visible exterior surfaces as needed		X
7.3	-- Periodic painting or staining of visible exterior surfaces (and routine maintenance associated with that work) which is to be performed for all or a group of Units	X	
7.4	-- Maintenance and repair of hardware components		X
7.5	-- All other maintenance or repair		X
<b>8.0</b>	<b>Doors not made primarily of wood and exterior door frames</b> (including garage doors):		
8.1	-- Routine cleaning		X
8.2	-- Annual maintenance (e.g. painting, staining, caulk) of visible exterior surfaces as needed		X

Item	Maintenance, Repair or Upkeep Obligation	Responsible Party	
		Association	Owner
8.3	-- Periodic painting or staining of visible exterior surfaces (and routine maintenance associated with that work) which is to be performed for all or a group of Units	X	
8.4	-- Maintenance and repair of hardware components		X
8.5	-- All other maintenance or repair		X
<b>9.0</b>	<b>Windows, shutters and screens:</b>		
9.1	-- Routine cleaning (e.g. window and screen cleaning)		X
9.2	-- Annual maintenance (e.g. caulk)		X
9.3	-- Periodic painting or staining of exterior components of windows performed which is to be performed for all or a group of Units	X	
9.4	-- Maintenance and repair of glass		X
9.5	-- Maintenance and repair of hardware components		X
9.6	-- Maintenance and repair of exterior shutters	X	
9.7	-- Maintenance and repair of screens		X
9.8	-- All other maintenance or repair		X
<b>10.0</b>	<b>Roof:</b>		
10.1	-- Periodic cleaning	X	
10.2	-- All other maintenance or repair	X	
<b>11.0</b>	<b>Gutters and Downspouts:</b>		
11.1	-- Periodic cleaning	X	
11.2	-- All other maintenance or repair	X	
<b>12.0</b>	<b>Decks, Balconies, Courtyard Areas, Patios and Rooftop Terraces:</b>		
12.1	-- Routine cleaning		X
12.2	-- Annual maintenance (e.g. painting and staining) of visible exterior surfaces as needed		X
12.3	-- Painting or staining of visible surfaces (and routine maintenance associated with that work) which is to be performed for all or a group of Units on a routine, periodic basis	X	
12.4	-- Maintenance of any outdoor kitchen or fireplace on Rooftop Terrace		X
12.5	-- Cleaning or pressure washing of visible floor surfaces (and routine maintenance associated with that work) which is to be performed for all or a group of Units on a routine, periodic basis.	X	
12.6	-- All other maintenance and repair.		X
<b>13.0</b>	<b>Fences (if permitted under Section 6.19):</b>		
13.1	-- Routine cleaning		X
13.2	-- Periodic painting or staining of visible surfaces (and routine maintenance associated with that work) which is to be performed for all or a group of Units	X	
13.3	-- Maintenance of gate hardware		X
13.4	-- All other maintenance and repair		X

14.0	<b>Water and sewer pipes, wire and conduits</b> , and related components, whether located within or outside of the boundaries of a Unit:		
14.1	-- If components serve (1) more than one Unit, or (2) both a Unit and Common Area (so long as such components are not maintained on an ongoing basis by a public or private utility company or by a governmental authority)	X	
14.2	-- If components serve only one Unit		X
<b>15.0</b>	<b>Hose bibs</b>		X
16.0	<b>Satellites and Antennas</b> , and related components, whether located within or outside of the boundaries of a Unit (if permitted under Section 6.9):		
16.1	-- If components serve more than one Unit and were installed by Declarant or the Association	X	
16.2	-- If components serve more than one Unit, but were not installed by Declarant or the Association		X
16.3	-- If components serve only one Unit		X

(b) Notwithstanding the assignment of responsibility listed above, the Association is not required to perform any maintenance or repair that is caused by a Unit Owner's use or misuse of any of the listed components. Further, the Association has no obligation to perform any maintenance or repair in response to a request by a Unit Owner.

(c) All routine or periodic cleaning or maintenance (including painting and staining) that is the responsibility of the Association will be scheduled on intervals determined by Board at its sole discretion.

(d) Upon resolution of the Board and approval by Owners representing at least a Majority of the Units and, during the Declarant Control Period, the consent of the Declarant, the Association may assume responsibility for providing additional maintenance of Units and the structures thereon beyond that listed in Section 5.1(a), with the expenses thereof to be paid as an assessment as provided in Section 4.

## **5.2. Maintenance of Common Area.**

(a) The Association shall maintain and keep in good repair the Common Area and, whether or not the same constitutes Common Area, the following:

- (i) all entry features for the Community, including any appurtenant landscaping;
- (ii) all street signs, if any, originally installed by Declarant or its affiliates, if and to the extent the same are not maintained on an ongoing basis by a governmental authority or third party;
- (iii) all storm water detention/retention facilities, including pipes, wires and conduits, and any fence, gate, wall or enclosure surrounding said storm

water detention/retention facilities and any other storm water drainage facilities which were originally maintained by Declarant or its affiliates and serve the Community, to the extent such areas are not maintained on an ongoing basis by a governmental authority or third party.

- (iv) all private Community streets and alleys;
- (v) all street medians and street islands and any landscaping associated therewith, if and to the extent the same are not maintained on an ongoing basis by a governmental authority or third party;
- (vi) all recreational amenities and facilities serving the Community, including pedestrian trails and walking paths within the Community;
- (vii) the centralized mailbox area and the mailboxes located thereon;
- (viii) all Community green space and open space;
- (ix) all of the property located outside of the boundary of Units not otherwise addressed in Section 5.1;
- (x) the Gate System;
- (xi) lawn and landscaping for the Common Area, including:
  - (A) lawn mowing on a regular basis;
  - (B) tree and shrub pruning;
  - (C) watering landscaped areas; and
  - (D) fertilizer and weed control treatments.

(b) The Association shall have the right, but not the obligation, to maintain property not owned by the Association and to enter into easements and cost sharing agreements where the Board has determined that such maintenance would benefit all or a group of Owners.

(c) Specifically excluded from the Association's maintenance responsibility shall be all maintenance specifically assigned to Unit Owners under Section 5.1.

(d) The Board in its sole discretion may leave portions of the Community as undisturbed natural areas, may change the scope of the landscape maintenance in the Community at any time and from time to time, or may, with the consent of the Declarant (during the Declarant Control Period) change the level of lawn maintenance performed. The Board may promulgate rules setting forth the extent of landscaping maintenance to be performed by the Association.

(e) The Board may authorize the officers of the Association to enter into contracts with any Person or Persons to perform maintenance on behalf of the Association.

(f) All routine, periodic maintenance that is the responsibility of the Association shall be scheduled on intervals determined by Board at its sole discretion.

**5.3. Maintenance by Unit Owners.**

(a) Common Area Maintenance Performed by an Owner or Occupant. If an Owner or Occupant performs maintenance or repair to the Common Area that is the responsibility of the Association (including, without limitation, landscaping of Common Area), the Owner or Occupant will be doing this work at his or her sole expense and will not be entitled to reimbursement from the Association, even if the Association accepts the maintenance or repair.

(b) Duties of Owners. Each Owner must:

- (i) perform his or her responsibility in such a manner so as not to unreasonably disturb other Persons in or on other Units;
- (ii) promptly report to the Association or its agent any defect or need for repairs for which the Association is responsible;
- (iii) not make any alterations in the portions of the Unit which are to be maintained by the Association, remove any portion thereof, make any additions thereto, or do anything with respect to the exterior or interior of such Unit or the structures thereon which would or might increase the Association's maintenance costs or jeopardize or impair the safety or soundness of any Unit or structure thereon, without first obtaining the written consent of the Board and all Owners and Mortgagees of the Units affected; and
- (iv) not impair any easement without first obtaining written consent of the Association and of the Owner or Owners and their Mortgagees for whose benefit such easement exists.

(c) Failure to Perform Maintenance.

(i) If the Board 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 then the Association shall, except in the event of 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, repairs or replacement deemed necessary. Except in an emergency situation, the Owner shall have 10 days from the date of the notice within which to complete such maintenance, repair or replacement, or, if such maintenance, repair or replacement is not capable of completion within such time period, to commence such work within such 10 day period and diligently pursue completion within a reasonable period of time.

(ii) If the Board determines that an emergency exists or that an Owner has not complied with the demand given by the Association as provided herein, the Association may provide such maintenance, repair or replacement to the Unit at such Owner's sole cost and expense, and all costs shall be added to and become a part of the specific assessment to which such Owner is subject, shall become and be a lien against the Unit, and shall be collected as provided herein for the collection of assessments.

(iii) Notwithstanding the foregoing, if the need for maintenance, repair or replacement by the Association under this Section is caused through the willful or negligent act of any Owner or Occupant or their family, guests, lessees or invitees, and is not covered or paid for by insurance, in whole or in part, then all of the costs of the work may be specifically assessed against the Unit of such Owner or Occupant.

(d) Not Applicable to Declarant. This Section 5.3 shall not apply to any Units owned by the Declarant unless occupied as a residence.

#### **5.4. Liability.**

(a) Owners, Occupants and their guests shall use the Common Area and all portions of the Community not contained within a Unit at their own risk and shall assume sole responsibility for their personal belongings used or stored thereon. All Owners and Occupants must inspect the Common Area and any improvements located thereon for any defects, perils or unsafe conditions related to the use and enjoyment thereof. The Association, Declarant and their respective officers, directors, employees, representatives and agents shall not be held liable for:

- (i) personal injury to any person occurring on the Common Area;
- (ii) loss or damage to personal belongings used or stored on the Common Area or on any other portion of the Community; or
- (iii) loss or damage, by theft or otherwise, of any other property of an Owner or Occupant.

(b) In addition to the foregoing, the Association, Declarant and their respective officers, directors, representatives, agents and employees shall not be liable for injury or damage to any Person or property:

- (i) caused by the weather or by an Owner or any other Person;
- (ii) 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

- (iii) 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.

### **5.5 Limited Common Area.**

(a) General. Limited Common Area consists of portions of the Common Area that is to be used exclusively by the Owners of one or more (but less than all) Units, as follows:

- (i) any portion of any heating and/or air conditioning system or other utility system (including the duct work from such system) which serves more than one Unit, but less than all Units, is assigned as Limited Common Area to the Units so served;
- (ii) the real property on which there is located any portion of the heating and/or air conditioning system (including the duct work from such system) serving a single Unit is assigned as Limited Common Area to the Unit so served;
- (iii) any utility meter which serves only one Unit is assigned as Limited Common Area to the Unit so served;
- (iv) any driveway, walkway, exterior steps, stoops, deck, courtyard or terrace which exclusively serves one Unit, but is not actually within the boundaries of the Unit as shown on the plat for the Community, is assigned as Limited Common Area to the Unit so served; and
- (v) any exterior lighting which is located outside of a Unit and exclusively serves such Unit is assigned as Limited Common Area to the Unit so served.

(b) Use of Limited Common Area. The use of Limited Common Area is more particularly described in Section 6.31.

### **5.6. Party Walls and Party Fences.**

(a) General Rules of Law to Apply. Each fence which shall serve and separate any two adjoining Units shall constitute a party fence and each wall built as a part of the original construction of a Unit which shall serve and separate any two adjoining Units shall constitute a party wall. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and fences and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The responsibility for and cost of repair and maintenance of a party wall or party fence shall be allocated as set forth in Section 5.1. If the cost is not allocated to the Association under Section 5.1, then it shall be shared by the Owners

who make use of the wall or fence, in equal proportions, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(c) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

(d) Arbitration. If any dispute arises concerning a party fence, or under the provisions of this Section, the parties shall submit the dispute to resolution by arbitration and each party shall appoint one professional arbitrator knowledgeable in party wall/fence issues. Should any party refuse to appoint an arbitrator within 10 days after written request therefore by the Board of Directors, the Board shall appoint an arbitrator for the refusing party and all costs associated therewith shall be a specific assessment against the refusing party. The arbitrators thus appointed shall appoint one additional arbitrator and the decision by a Majority of all three arbitrators shall be binding upon the parties and shall be a condition precedent to any right of legal action that either party may have against the other.

#### **5.7. Gate System.**

(a) The Board, with the consent of the Declarant during the Declarant Control Period, shall determine when the Gate System will be operational (that is, when the gates will be closed or locked).

(b) Neither Declarant, the Association nor their respective officers, directors, members, partners, representatives or agents shall be responsible for the security of Owners, Occupants or their family members, guests, invitees or property. NEITHER DECLARANT, THE ASSOCIATION NOR ANY OWNER OR OCCUPANT GUARANTEES OR ASSURES TO ANY OTHER OWNER, OCCUPANT OR ANY OTHER PARTY WHOMSOEVER THAT THE GATE SYSTEM WILL IN ANY MANNER WHATSOEVER PROVIDE PERSONAL PROTECTION OR SECURITY TO OWNERS, OCCUPANTS, GUESTS, INVITEES OR ANY OTHER PERSON, OR THEIR PERSONAL POSSESSIONS. EACH OWNER, BY THE ACCEPTANCE OF A DEED TO A UNIT, SHALL HAVE ASSUMED THE ENTIRE RISK AS BETWEEN SUCH OWNER AND DECLARANT OR THE ASSOCIATION, AS APPLICABLE, FOR ANY LOSS OR DAMAGE TO PERSON OR PROPERTY WITHIN THE COMMUNITY ARISING FROM ANY DEFICIENCY, FAILURE OR DEFECT IN THE GATE SYSTEM OR OTHERWISE.

(c) All governmental authorities shall have access to the Community for law enforcement, safety and emergency purposes. Each Owner shall look solely to the applicable governmental authority for the provision of law enforcement and police protection.

(d) The Gate System is not intended to replace or to serve in lieu of individual alarm systems or other measures designed to provide security at a residence or within any Unit. Each Owner is encouraged to install personal security devices upon and within such Owner's Unit to the same extent that would be prudent if the Gate System did not exist.

(e) The Gate System will be installed based upon the representations of vendors regarding the operation and performance capabilities of the components of the Gate System. DECLARANT DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, AND MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY NATURE WHATSOEVER REGARDING THE GATE SYSTEM, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR THE PURPOSES FOR WHICH IT WAS DESIGNED. Declarant does not guarantee that the Gate System will avert or prevent occurrences or consequences which the Gate System is designed to avert or prevent.

(f) The Gate System shall be owned, operated, and maintained by the Association at its sole cost and expense (not by the Declarant) and the costs associated therewith shall be an expense of the Association.

(g) Each Owner shall use the Gate System in the proper manner and within the rules and regulations relating thereto as may be adopted from time to time by the Board.

## **Section 6**

### **Use Restrictions and Rules**

**6.1. General.** This Section 6 sets out certain use restrictions which must be complied with by all Owners and Occupants. These use restrictions may be amended only in the manner provided in Section 15 regarding amendment of this Declaration. The Board may, from time to time, without consent of the members, promulgate, modify or delete and rules and regulations applicable to the Units and the Common Area. Such rules, regulations and use restrictions shall be distributed or otherwise made available (in a manner deemed reasonable by the Board) to all Owners and Occupants 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 at a regular or special meeting by a Majority of the Total Association Vote and, during the Declarant Control Period, by the Declarant.

### **6.2. Use of Units.**

(a) All Units shall be used for single-family residential purposes exclusively, and no trade, business or business activity of any kind shall be carried on or conducted in or from any Unit or any part of the Community at any time without the prior written approval of the Board, except that the Owner or Occupant residing at a Unit may conduct such ancillary business activities within the residence located on the Unit so long as:

- (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from the exterior of the residence;
- (ii) the business activity does not involve regular, frequent or conspicuous visitation of the Unit by employees, clients, customers, suppliers or other business invitees for business purposes;

- (iii) the business activity conforms to all zoning requirements for the Community;
- (iv) the business activity does not increase traffic in the Community (other than by a reasonable number of deliveries by couriers, express mail carriers, parcel delivery services and other such similar delivery services);
- (v) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the Association's ability to obtain insurance coverage;
- (vi) the business activity is consistent with the residential character of the Community and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Community, as may be determined in the sole discretion of the Board; and
- (vii) the business activity does not result in a materially greater use of common facilities or Association services.

(b) The terms "business" and "trade," as used herein, shall 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:

- (i) such activity is engaged in full- or part-time;
- (ii) such activity is intended to or does generate a profit; or
- (iii) a license is required therefor.

(c) Notwithstanding anything to the contrary herein, this Section shall not apply to activities of the Association nor shall it be construed as prohibiting the Declarant or its respective affiliates from maintaining model homes, speculative housing or sales and construction trailers in the Community.

(d) Leasing of a Unit shall not be considered a trade, business or business activity. Units may be leased for residential purposes, subject to the restrictions set forth at Section 8.

### 6.3. Signs.

(a) No sign of any kind shall be erected by an Owner or Occupant within the Community without the prior written consent of the Board except:

- (i) one professional security sign consistent with the Community-Wide Standard not to exceed 4 inches by 4 inches in size;
- (ii) such signs as may be required by legal proceedings;
- (iii) reasonable and appropriate signs erected by the Board, Declarant and their respective affiliates, which may include signs related to the development, construction, marketing and sales of Units in the Community; and
- (iv) in connection with a bona-fide offer to sell a Unit, one professionally lettered "For Sale" sign consistent with the Community-Wide Standard may be displayed on the Unit, but only if
  - (A) the sign has a maximum area of 4 square feet and a maximum height of 4 feet above ground level, and
  - (B) the content of the sign and anything else attached to, associated with or in the vicinity of the sign states or conveys only that the residence is for sale and the name and telephone number of the person to contact for additional information.

(b) Any other type of "For Sale" sign shall not be permitted in the Community. No "For Rent" or other leasing signs may be posted anywhere on a Unit. The Board may adopt reasonable rules and regulations governing the display and placement of signs in the Community, including, without limitation, imposing reasonable time, place and manner restrictions.

(c) The Board may impose a fine against any Owner or Occupant of up to \$500.00 per day for violations of this Section in addition to any other remedies of the Association. Any fine imposed pursuant to this Section shall be deemed an assessment against the Unit and may be collected in the same manner as provided herein for the collection of assessments.

### 6.4. Vehicles.

(a) The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, golf carts, all-terrain vehicles, four-wheelers, trucks, campers, buses, vans, automobiles and limousines.

(b) Vehicles shall not be parked on the Common Area (except passenger non-commercial automobiles parked in designated parking areas or parking spaces while the users thereof are using the Common Area) or on any other portion of the Community other than the driveway and the garage.

(c) All vehicles shall be parked within garage parking spaces, unless and except to the extent that the Occupants of a Unit shall have more vehicles than the number of garage parking spaces serving their Unit. Vehicles may be parked in the driveway serving a Unit only after all of the garage parking spaces serving such Unit have vehicles parked in them. Any vehicle parked on a driveway may not encroach onto any street, alley, sidewalk or other landscaped area.

(d) Disabled vehicles, stored vehicles, boats, trailers, campers, buses, vans (except minivans or utility vehicles used as non-commercial passenger vehicles), trucks (except pick-up trucks and sport utility vehicles), recreational vehicles (for example, without limitation, RV's and motor homes), vehicles used primarily for commercial purposes and vehicles with commercial writing on their exteriors are prohibited from being parked in the Community, except in enclosed garages. Notwithstanding the above, trucks, vans, commercial vehicles and vehicles with commercial writing on their exteriors shall be allowed temporarily in the Community during normal business hours for the purpose of serving any Unit or the Common Area. No such vehicle shall be authorized to remain in the Community overnight or for any purpose, without the prior written consent of the Board, except to the extent it is there to provide services to a Unit or the Common Area. For purposes of this paragraph, a vehicle shall be considered "disabled" if it does not have a current license tag or is inoperable. A vehicle shall be considered "stored" if it remains in the Community for 3 consecutive days or longer without being moved and without the prior written permission of the Board.

(e) If any vehicle is parked on any portion of the Common Area in violation of this Section or in violation of the Association's rules and regulations, the Board may place a notice on the vehicle specifying the nature of the violation and stating that after 24 hours the Association (if permitted by law to do so) may cause a private towing service to tow the vehicle or may request or cause the City of Alpharetta to tow the vehicle. The notice shall include the name and telephone number of the person or entity which will do the towing and the name and telephone number of a person to contact regarding the alleged violation. If 24 hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within 6 months of such notice, the Association (if permitted by law to do so) may cause a private towing service to tow the vehicle or may request or cause the City of Alpharetta to tow the vehicle, in accordance with the notice, without further notice to the Owner or user of the vehicle. A vehicle that is moved temporarily to circumvent the limitation in this paragraph will be automatically (without further notice) considered in violation of this paragraph if the circumstances that led to the initial notice of violation re-occur. If a vehicle is parked on a private road, drive and/or alley (other than in designated parking spaces) or is extending from a driveway into a street or alley such that it is blocking another vehicle or access to a Unit, is obstructing the flow of traffic, or otherwise creates a hazardous condition, no notice shall be required and the Association (if permitted by law to do so) immediately may cause a private towing service to tow the vehicle or may request or cause the City of Alpharetta to tow the vehicle.

(f) If a vehicle is towed in accordance with this Section, neither the Association nor its directors, officers or agents, nor the Declarant shall be liable to any person for any claim of damage or otherwise 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.

(g) Notwithstanding anything to the contrary in this Section 6.4, the Declarant and its respective agents, subcontractors and assigns shall have the right, during regular business hours, to park vehicles on any and all streets within the Community as needed in order to facilitate the construction, development, sale of homes, and build out of the Community.

(h) All parking shall be subject to such further rules and regulations as the Board may adopt from time to time, in its discretion.

**6.5. Occupants Bound.** All provisions of the Declaration and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants of any Unit even though Occupants are not specifically mentioned. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not paid timely, the fine may then be levied against the Owner. Unpaid fines shall constitute a lien on the Unit.

**6.6. Animals and Pets.**

(a) 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 a reasonable number as determined by the Board from time to time.

(b) No pets shall be kept, bred or maintained for any commercial purpose.

(c) No dog runs, runners or exterior pens for household pets shall be erected or maintained in the Community.

(d) Dogs shall at all times when outside of a dwelling be kept on a leash or otherwise under the physical control of a responsible person.

(e) An Owner's failure to remove fecal matter or other solid waste left on any Common Area by an animal owned by an Occupant of such Owner's Unit (or their guests or invitees) shall be conclusively deemed to be a nuisance, and shall subject such Owner to such reasonable penalties as may be determined by the Association, including without limitation, upon repeated violations, the removal of such animal as described above.

(f) All Owners must control their pets at all times, whether or not such Owners are present, in a manner that will prevent any pet from (all of the following as determined by the Association in its sole discretion):

- (i) making noise at objectionable sound levels for extended periods of time, whether continuously or intermittently;

- (ii) endangering the health or safety of other Owners, their families, guests or invitees or creating fear in other Owners as to the safety of themselves, their families, guests or invitees; or
- (iii) otherwise constituting a nuisance or inconvenience to the Owners or Occupants of any other Unit.

(g) The Association may require that an Owner remove any animal that presents an actual threat to the health or safety of residents and require abatement of any nuisance or unreasonable source of annoyance. If an Owner fails to remove an animal as provided herein, the Association shall have the right to institute legal action to have the animal removed and all costs associated therewith shall be a specific assessment against the Unit of such Owner.

(h) Pets in the Community shall be subject to such further rules and regulations as the Board may adopt from time to time, in its discretion.

#### **6.7. Nuisance.**

(a) Each Owner and Occupant must prevent the development of any unclean, unhealthy, unsightly or unkempt condition on his or her Unit. No Unit 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. No substance, thing or material will be kept in Unit 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 noxious or offensive activity shall be carried on in Unit, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to any Person using any property adjacent to the Unit. Owners and Occupants shall not maintain any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the Community. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Unit unless required by law.

(b) Notwithstanding anything to the contrary herein, each Owner and Occupant acknowledges that the Declarant and its respective agents and subcontractors may engage in construction activities on one or more Units in the Community and further agrees that such construction activities shall not be deemed a nuisance.

**6.8. Unsightly or Unkempt Conditions.** Owners and Occupants may not pursue or undertake any hobbies or other activities that might tend to cause disorderly, unsightly or unkempt conditions in any part of the Community. This includes (and specifically prohibits), without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles, engines and other mechanical devices.

### 6.9. Antennas and Satellite Dishes.

(a) No transmission antennas or satellite dishes of any kind, and no direct broadcast satellite (“DBS”) antennas or multi-channel multi-point distribution service (“MMDS”) antennas larger than 1 meter in diameter, shall be placed, allowed or maintained upon any portion of the Community, including any Unit, without the prior written consent of the Board. DBS and MMDS antennas and satellite dishes 1 meter or less in diameter, antennas designed to receive or transmit fixed wireless signals and television broadcast service antennas (each a “Permitted Antenna”) may be installed only if reasonably screened and located as approved by the Board and installed in accordance with the rules and regulations of the Federal Communications Commission and of the Association, both as may be amended from time to time. However, neither the Board nor the Association may restrict the location of a Permitted Antenna if such restriction:

- (i) imposes unreasonable delay or prevents the use of the antennae;
- (ii) unreasonably increases the cost of installation; or
- (iii) an acceptable quality signal cannot otherwise be obtained.

(b) The Board and Declarant reserve the right to (but shall not be obligated to) erect any type and size of master antenna, satellite dish or other similar master system for the benefit of the Community. Each Owner and Occupant acknowledges that this provision benefits all Owners and Occupants and each Owner and Occupant agrees to comply with this provision despite the fact that the erection of an individual outdoor antenna or similar device would be the most cost-effective way to receive the signals sought to be received.

**6.10. Miscellaneous Items Outside a Unit.** In addition to other restrictions in this Declaration, the following shall not be placed, allowed or maintained upon any portion of the Community:

- (a) Vegetable gardens (it being understood that any landscaping or garden planting may be done only in accordance with the Architectural Guidelines or, if Architectural Guidelines have not been established, with prior written consent of the Board);
- (b) Statuary;
- (c) Recreational equipment, including, without limitation, basketball goals or swingsets;
- (d) Woodpiles;
- (e) Clotheslines; or
- (f) Grills, except as follows: Grills will be (i) permitted on the rear deck or patio, or on the upper level “rooftop terrace”, but (ii) not permitted on the front stoop or main level front porch.

**6.11. Tree Removal.**

(a) No trees shall be removed without the express prior consent of the Board, except for:

- (i) trees removed by the Declarant or its respective affiliates; and
- (ii) diseased or dead trees.

(b) In addition to all other remedies available to the Board, violating Owners may be required to plant trees of comparable size, type and density of those removed or the Board may plant such trees as are reasonably deemed necessary by the Board at the sole expense of the violating Owner. The Association and Owners shall also comply with all zoning conditions and local ordinances regarding tree removal. If there is a conflict between the provisions of this Section and any zoning conditions or local ordinances, the more restrictive provision shall control.

**6.12. Lighting.**

(a) Notwithstanding Section 7, the following exterior lighting may be installed without the necessity of obtaining the prior approval of the Board:

- (i) seasonal decorative lights during the holiday season, subject to any rules or regulations promulgated by the Board;
- (ii) illumination of model homes and entrance features constructed by the Declarant or its affiliates; and
- (iii) other lighting originally installed by the Declarant or its affiliates.

(b) All exterior lighting must comply with the Architectural Guidelines. If the proposed lighting does not comply with the Architectural Guidelines, the lighting plan must be submitted for review and approval in accordance with Section 7. Implementation of the lighting plan may not take place until approval has been given by the ARC.

**6.13. Drainage.**

(a) Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant of any Unit may obstruct or re-channel the drainage flows after the location and installation of drainage swales, storm sewers or storm drains. Each Owner, however, has the obligation to clear and maintain the flow of all storm water drainage facilities located on and used exclusively in connection with that Owner's Unit.

(b) Declarant, for itself and its affiliates, reserves the right to prepare sloping banks, cut or fill, on a slope on all streets and roads. Declarant, for itself and its affiliates, hereby reserves a perpetual easement across all Community property for the purpose of altering drainage

and water flow. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

**6.14. Sight Distance at Intersections.** All property located at street intersections shall be so landscaped as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain at any corner where this would create a traffic or sight problem.

**6.15. Garbage.**

(a) All rubbish, trash and garbage shall be regularly removed from the Unit and shall not be allowed to accumulate thereon. Garbage cans and other similar items shall be located or screened so as to be concealed from the view of neighboring Units, streets and property located adjacent to the Unit. No garbage or trash shall be placed on the Common Area, temporarily or otherwise, except as required for regular pick-up as provided herein.

(b) 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. While the removal of normal household trash will be covered by such contract and included in the annual assessment, additional charges may be incurred by the Association for the removal of used appliances or other large items, which costs may be specifically assessed against the applicable Unit. Trash and recycling receptacles must be placed at the curb no earlier than 5:00 p.m. the day before pick up and must be removed within 24 hours.

(c) Trash removal and recycling shall be subject to such further rules and regulations as the Board may adopt from time to time, in its discretion.

**6.16. Subdivision of Unit.** No Unit shall be subdivided or its boundary lines changed. Declarant, however, hereby expressly reserves the right to replat any Units or other property in the Community with the consent of the Owner thereof. Any such division, boundary line change or replatting shall not be in violation of the applicable subdivision and zoning regulations.

**6.17. Firearms and Fireworks.** The display or discharge of firearms or fireworks within the Community is prohibited. However, the display of lawful firearms is permitted by law enforcement officers and is also permitted for the limited purpose of transporting firearms to or from a Unit. The term "firearms" includes, but is not limited to, B-B guns, pellet guns, archery equipment and firearms of all types, regardless of size. The term "fireworks" shall include, but not be limited to, those items listed in O.C.G.A. Section 25-10-1, as amended.

**6.18. Solar Devices.** No artificial or man-made device which is designed or used for the collection of or heating by solar energy or other similar purposes shall be placed, allowed or maintained upon any portion of the Community, including any Unit, without the prior written consent of the Board.

**6.19. Fences.** Except for fences installed by the Declarant or the Association, no fence or fencing type barrier of any kind shall be placed, erected, allowed or maintained upon any portion of the Community.

**6.20. Exterior Colors.** The exterior of all improvements, including, without limitation, residences, constructed, erected, allowed or maintained in the Community must be painted or repainted in a color used by Declarant or its affiliates in the original construction and marketing of residences within the Community, or in accordance with applicable Architectural Guidelines. If the proposed color does not comply with the Architectural Guidelines, the color selection must be submitted for review and approval in accordance with Section 7. Implementation of the exterior color may not take place until approval has been given by the ARC.

**6.21. Detached Structures.**

(a) Except for detached structures installed by Declarant or its affiliates, no detached structure shall be placed, erected, allowed or maintained within the Community. Storage sheds or structures are specifically prohibited. No trailers, campers, vehicles, shacks, tents, any garages (attached and detached), barns or other structures may be used as a residence or living space in any manner whatsoever, either temporarily or permanently, within the Community. Specifically, no garage, including, but not limited to, attached and detached garages, shall be utilized in any manner whatsoever as an additional living space or residence.

(b) Notwithstanding anything to the contrary herein, nothing in this Section shall 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. In addition, nothing in this Declaration shall be construed to prevent Declarant from developing, constructing, marketing, or maintaining model homes or speculative housing or sales and construction trailers in the Community.

**6.22. Entry Features and Street Signs.** Owners shall not alter, remove or add improvements to any entry features or street signs constructed within the Community, or any part of any easement area associated therewith, without the prior written consent of the Board.

**6.23. Swimming Pools.** No swimming pools shall be permitted in the Community unless installed by the Declarant. However, portable, inflatable wading pools designed for use by small children shall be permitted so long as they are properly maintained and stored out of view of neighboring Units, driveways, alleys, and streets.

**6.24. Garage Sales.** No garage sale, yard sale, flea market or similar activity shall be conducted in the Community without the prior written consent of the Board. If permitted, such activities shall be subject to all conditions imposed by the Board.

**6.25. Window Coverings; Window Treatments.** All shades, drapery linings and other window treatments visible from the exterior of a Unit shall be white, off-white or such other acceptable color determined by the Board or as set forth in the Architectural Guidelines. No foil or other reflective material shall be used on any windows for sun screens, blinds, shades

or any other purpose. If the proposed window covering or treatment does not comply with the Architectural Guidelines, the window covering or treatment must be submitted for review and approval in accordance with Section 7. Implementation of the window coverings or treatments may not take place until approval has been given by the ARC.

**6.26. Use of Common Area.** There shall be no obstruction of the Common Area, nor shall anything be kept, parked or stored on any part of the Common Area without the prior written consent of the Board.

**6.27. Prohibition of Damage.**

(a) Without the prior written consent of the Board, nothing shall be done or kept in the Community which would:

- (i) increase the rate of insurance that the Association is obligated to obtain and maintain hereunder;
- (ii) be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body; or
- (iii) increase the common expenses of the Association.

(b) No Owner shall do any work which, in the reasonable opinion of the Board, would:

- (i) jeopardize the soundness or safety of the Community or any structure located within the Community;
- (ii) reduce the value thereof; or
- (iii) impair any easement or hereditament thereto.

(c) No damage to or waste of the Common Area, or any part thereof, or of the exterior of any Unit shall be permitted by any Owner or member of his or her family or any invitee of any Owner. Each Owner shall indemnify and hold the Association and the other Owners harmless against all loss to the Association or other Owners resulting from any such damage or waste caused by such Owner, members of his or her family, guests, invitees or Occupants of his or her Unit.

**6.28. Window Air-Conditioning Units.** No window air conditioning units or window fans shall be installed on any Unit in the Community.

**6.29. Traffic Regulations.**

(a) All vehicular traffic on a private road, drive and/or alley shall be subject to the provisions of the state and local laws concerning the operation of motor vehicles on public streets.

(b) 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 similar to those in force on public streets, within the Community. The Association shall be entitled to enforce the same by establishing such enforcement procedures as it deems appropriate, including levying and collecting fines for the violation thereof. If there is 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.

(c) 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 or alleys 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.

**6.30. Flags.** The Board may promulgate reasonable rules and regulations with respect to the display of flags in the Community, including, without limitation, regulating the size of flags that may be displayed and imposing reasonable time, place and manner restrictions pertaining to such displays. However, the Association shall not enact any rule or regulation which has the effect of prohibiting any Owner from displaying the flag of the United States of America on a Unit in the Community in contravention of the Freedom to Display the American Flag Act of 2005, or any other federal or state laws, rules or regulations.

**6.31. Use of Limited Common Area.** Use of Limited Common Area is restricted exclusively to the Owners of the Units to which such Limited Common Area is assigned, and said Owner's family members, guests, tenants and invitees. The Limited Common Area is reserved for the exclusive use of the Unit Owners, but shall not be construed or interpreted to be separate and apart from the Common Area in general, and the restrictions applicable to the Common Area shall also apply to the Limited Common Area.

**6.32. Ponds, Creeks and Streams.**

(a) Except as herein provided, all ponds, lakes, storm water retention or detention ponds, creeks and streams within the Community may be used for aesthetic amenities and storm water drainage only. No other use, including, without limitation, fishing, swimming, ice skating, playing, boating, or use of personal flotation devices, is permitted.

(b) The Association and/or the Declarant shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of ponds, lakes, storm water retention or detention ponds, creeks or streams within the Community.

(c) No Owner or Occupant shall have any right to place rocks, stones, trash, garbage, sewage, waste water, rubbish, debris, ashes or other refuse in any ponds, lakes, storm water retention or detention ponds, creeks or streams within the Community, or any other Common Property.

(d) Applicable governmental agencies, the Declarant and the Association, shall have the sole right to control the water level of all other bodies of water located within the Community and to control the growth and eradication of plants, fowls, reptiles, animals, fish and fungi in and around any ponds, lakes, storm water retention or detention ponds, creeks and streams within the Community. Owners shall have no riparian or littoral rights with respect to the waters in any pond, lake, storm water retention or detention pond, creek or stream within the Community and shall not be permitted to withdraw water from any pond, lake, storm water retention or detention pond, creek or stream as may exist in the Community without the prior written consent of the Board, and, during the Declarant Control Period, the Declarant.

### **6.33. Municipal and Utility Agreements.**

#### **(a) Stormwater Management.**

(i) A portion of the Community is encumbered by one or more Stormwater Management and Maintenance Agreements with Fulton County and/or the City of Alpharetta, as the same may be amended from time to time, and which may be recorded in the Fulton County Georgia land records (the “Stormwater Agreements”).

(ii) Declarant hereby reserves the right, without obligation, to enter into and record any and all amendments, modifications and other documents relating to the Stormwater Agreements in its sole and absolute discretion, without any approval of or vote by the Association or the Owners. Owners and the Association shall comply with all of the foregoing.

(iii) Declarant hereby assigns to the Association, and the Association hereby assumes, all of the rights and obligations of Declarant, under the Stormwater Agreements. The Declarant shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of any of the encumbered property within the Community. The Board may issue rules and regulations on the permissible use of any area covered by the Stormwater Agreements by Owners, Occupants and guests, which rules and regulations shall not be inconsistent with the purposes and intentions of the Stormwater Agreements or applicable ordinances of Fulton County.

#### **(b) Georgia Power Easement Agreement.**

(i) A portion of the Community is encumbered by one or more Easement Agreements in favor of Georgia Power Company, which are recorded in the Fulton County Georgia land records (the “GPC Easements”).

(ii) Declarant hereby reserves the right, without obligation, to enter into and record any and all amendments, modifications and other documents relating to the GPC Easements in its sole and absolute discretion, without any approval of or vote by the Association or the Owners. Owners and the Association shall comply with all of the foregoing.

(iii) Declarant hereby assigns to the Association, and the Association hereby assumes, all of the rights and obligations of Declarant, under the GPC Easements. The Declarant shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of any of the encumbered property within the Community. The Board may issue rules and regulations on the permissible use of any area covered by the Easement Agreement by Owners, Occupants and guests, which rules and regulations shall not be inconsistent with the purposes and intentions of the Easement Agreement or applicable ordinances of Fulton County.

(c) Encroachment Agreement for Easement. Declarant hereby assigns to the Association, and the Association hereby assumes, all of the rights and obligations of Declarant, under that certain Encroachment Agreement for Easement between Declarant and Georgia Power Company, which may be recorded in the Fulton County, Georgia land records, as the same may be amended from time to time (the "Encroachment Agreement"). The Encroachment Agreement permits some limited use of the easement area described therein, including, without limitation, the installation of grade-level patios and some planting of shrubbery and low growing trees (not to exceed 15 feet in height at maturity).

(d) Easement Agreement and Non-Compete Agreement.

(i) A portion of the Community is encumbered by an Easement Agreement and Non-Compete Agreement between Declarant and Dominion Senior Living Senior Living at Westside, LLC ("DSL") dated April 25, 2014 and recorded at Book 53769, Page 431, Fulton County Georgia land records (the "DSL Easement"). The DSL Easement grants to DSL a drainage easement and sewer easement, provides for certain maintenance obligations for the detention pond, sets forth certain insurance requirements of Declarant, and prohibits Declarant from developing a health care or senior living facility within the Community.

(ii) Declarant hereby reserves the right, without obligation, to enter into and record any and all amendments, modifications and other documents relating to the DSL Easement in its sole and absolute discretion, without any approval of or vote by the Association or the Owners. Owners and the Association shall comply with all of the foregoing.

(iii) Declarant hereby assigns to the Association, and the Association hereby assumes, all of the rights and obligations of Declarant, under the DSL Easement. The Declarant shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of any of the encumbered property within the Community. The Board may issue rules and regulations on the permissible use of any area covered by the Easement Agreement by Owners, Occupants and guests, which rules and regulations shall not be inconsistent with the purposes and intentions of the Easement Agreement or applicable ordinances of Fulton County.

**Section 7**  
**Architectural Standards**

**7.1. General**

(a) No exterior construction, alteration, addition or erection of any nature whatsoever (including, without limitation, fences, pools, tennis courts, exterior lighting, landscaping, trees, treehouses and play equipment) shall be commenced or placed upon any part of the Community, except such as is (i) installed by the Declarant or its affiliates or the Association, (ii) approved in accordance with this Section, or (iii) otherwise expressly permitted herein.

(b) No exterior construction, addition, erection or alteration shall be made unless and until the plans and specifications showing at least the nature, kind, shape, height, materials and location shall have been submitted in writing to, actually received by, and approved in writing by the Board. The Board may promulgate written guidelines for the exercise of this review. The Board shall be the sole arbiter of such plans and specifications and may withhold approval on any reasonable basis, including purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. If the Board fails to approve or to disapprove plans and specifications within 60 days after such plans and specifications have been actually received by it, such plans and specifications will be deemed approved. However, all activities pursuant to plans which have been deemed approved must be consistent with such plans and must be consistent and in accordance with, and may not violate, this Declaration and any design guidelines.

(c) The Board may adopt written architectural and landscaping guidelines ("Architectural Guidelines") and application and review procedures, which may provide for a review fee. The Architectural Guidelines or the application and review procedures may be modified, in whole or in part, repealed or expanded by the Board at any time and from time to time at its sole discretion. If the Board modifies, expands or repeals all or any portion of the Architectural Guidelines or the application and review procedures, said new Architectural Guidelines or application and review procedures shall be distributed to all Owners and Occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants. The Board shall make the Architectural Guidelines available to Owners and Occupants who seek to engage in construction upon all or any portion of their Unit and such Owners and Occupants shall conduct their operations strictly in accordance therewith and with the provisions of this Section 7.

(d) All Owners and Occupants of Units are hereby notified that the use of their Units is limited by the Architectural Guidelines as they may be amended, expanded, and otherwise modified hereunder. Each Owner, by acceptance of a deed or entering into a contract of sale, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected, that the Architectural Guidelines may change from time to time, and that such changed Architectural Guidelines may or may not be set forth in an instrument recorded in the Fulton County, Georgia land records.

**7.2. Architectural Review Committee.** The Board may, but shall have no obligation to, establish an architectural review committee ("ARC"), which shall then have such rights, powers and authority as may be granted to it by the Board. The Board may grant to the ARC all of its rights, powers and authorities hereunder, or may grant the ARC such limited rights as it deems appropriate in its sole discretion. If all or any portion of such rights, powers and authorities are granted to an ARC, this Section 7 or portions thereof, as appropriate, shall then be read and interpreted as if any reference to the authority of or action by the Declarant in this Section 7 were a reference to the ARC. Notwithstanding anything herein to the contrary, the Board shall have the sole right and authority to appoint and remove the members of the ARC.

**7.3. Inspection Rights.** Any member of the Board shall have the right, during reasonable hours, to enter upon any property to determine whether or not these restrictive covenants have been or are being complied with and such Person or Persons shall not be deemed guilty of trespass by reason of such entry. Nothing herein shall authorize entry into dwelling located on a Unit without the permission of the Owner.

**7.4. Owner Responsibilities.** As a condition of any approval granted under this Section, the Owner making the application, on behalf of such Owner and such Owner's successors-in-interest, shall assume all responsibility for the maintenance, repair, replacement and insurance to and on any change, modification, addition or alteration. In the discretion of the Board, an Owner may be made 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.

**7.5. New Construction.** Notwithstanding anything to the contrary in this Section 7, during the Declarant Control Period, Declarant shall have the sole right, power and authority to review and approve all plans and specifications for new home construction in the Community. Upon the termination of the Declarant Control Period or upon the voluntary surrender of such right by Declarant in a document executed and recorded in the land records, the Board shall have the right to review and approve all plans and specifications for new home construction in the Community.

**7.6. Limitation on Liability.** PLANS AND SPECIFICATIONS ARE NOT APPROVED FOR ENGINEERING OR STRUCTURAL DESIGN, QUALITY OF MATERIALS, COMPLIANCE WITH ZONING CONDITIONS, BUILDING CODES, PERMITTING REQUIREMENTS OR OTHER LOCAL OR GOVERNMENTAL LAWS AND ORDINANCES GOVERNING CONSTRUCTION IN THE COMMUNITY. BY APPROVING PLANS AND SPECIFICATIONS, THE DECLARANT, THE BOARD, ITS MEMBERS, AND THE ASSOCIATION DO NOT ASSUME LIABILITY OR RESPONSIBILITY THEREFOR, NOR FOR ANY DEFECT IN ANY STRUCTURE CONSTRUCTED FROM SUCH PLANS AND SPECIFICATIONS OR FOR VIOLATIONS OF BUILDING CODES, ZONING CONDITIONS, PERMITTING REQUIREMENTS OR OTHER VIOLATIONS OF LOCAL LAWS AND ORDINANCES GOVERNING CONSTRUCTION IN THE COMMUNITY. DECLARANT, ITS PARTNERS AND AFFILIATES, THE ASSOCIATION, THE BOARD AND THE OFFICERS, DIRECTORS, MEMBERS, SHAREHOLDERS, EMPLOYEES AND AGENTS OF ANY OF THEM, SHALL NOT BE LIABLE IN DAMAGES OR OTHERWISE

TO ANYONE SUBMITTING PLANS AND SPECIFICATIONS FOR APPROVAL, OR TO ANY OWNER OF PROPERTY AFFECTED BY THESE RESTRICTIONS, BY REASON OF ANY MISTAKE IN JUDGMENT, NEGLIGENCE OR NONFEASANCE ARISING OUT OF OR IN CONNECTION WITH THE APPROVAL OR DISAPPROVAL OR THE FAILURE TO APPROVE OR DISAPPROVE ANY SUCH PLANS AND SPECIFICATIONS. EVERY PERSON WHO SUBMITS PLANS AND SPECIFICATIONS AND EVERY OWNER AGREES THAT SUCH PERSONS AND OWNERS WILL NOT BRING ANY ACTION OR SUIT AGAINST DECLARANT, ITS PARTNERS AND AFFILIATES, THE ASSOCIATION, THE BOARD OR THE OFFICERS, DIRECTORS, MEMBERS, SHAREHOLDERS, EMPLOYEES AND AGENTS OF ANY OF THEM, TO RECOVER ANY DAMAGES OR FOR ANY OTHER PURPOSE, AND SUCH PERSONS AND OWNERS HEREBY RELEASE, REMISE, QUITCLAIM AND COVENANT NOT TO SUE FOR ALL CLAIMS, DEMANDS AND CAUSES OF ACTION, ARISING OUT OF OR IN CONNECTION WITH ANY MISTAKE IN JUDGMENT, NEGLIGENCE OR NONFEASANCE IN CONNECTION WITH THE APPROVAL OR DISAPPROVAL OR THE FAILURE TO APPROVE OR DISAPPROVE ANY SUCH PLANS AND SPECIFICATIONS. ALL SUCH PERSONS AND OWNERS HEREBY WAIVE THE PROVISIONS OF ANY LAW WHICH PROVIDE THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS, DEMANDS AND CAUSES OF ACTION NOT KNOWN AT THE TIME THE RELEASE IS GIVEN.

**7.7. Declarant Exclusion.** This Section 7 shall not apply to any activities of the Declarant or its affiliates. No architectural review is required for any activities of Declarant or its affiliates.

## **Section 8** **Leasing**

### **8.1 General.**

(a) In order to preserve the character of the Community as predominantly owner-occupied, and to comply with the eligibility requirements for financing in the secondary mortgage market, leasing of Units shall be governed by the applicable zoning conditions and the restrictions imposed by this Section. As used herein, "leasing" shall mean the regular, exclusive occupancy of a Unit by any Persons other than the Owner for which the Owner receives any direct or indirect monetary or economic benefit. The occupancy of a Unit by a roommate of an Owner then occupying a Unit and occupancy of a Unit by a member of an Owner's family shall not constitute leasing. Except as provided herein, the leasing of Units shall be prohibited.

(b) Owners desiring to lease their Units may do so only if they have applied for and received from the Board a "leasing permit," or "hardship leasing permit" pursuant to an application process to be promulgated by the Board. Such a permit, upon its issuance, will allow an Owner to lease such Owner's Unit in strict accordance with the terms of the permit and this Section. The Board shall have the authority to establish conditions as to the duration and use of such permits consistent with this Section. Each leasing permit or hardship leasing permit, as applicable, shall be valid only as to a specific Owner and Unit and shall not be transferable

between either Units or Owners (including a subsequent Owner of a Unit for which a permit was issued to the Owner's predecessor in title).

**8.2 Maximum Allowable Leases.** An Owner's application for a leasing permit shall be considered if the number of then current, outstanding leasing permits for Units, including the request then under consideration, does not exceed the "Maximum Allowable Leases." The Maximum Allowable Leases is defined as 8 Units.

**8.3 Revocation of Leasing Permit.** A leasing permit shall be automatically revoked upon the happening of any of the following events:

- (a) the sale or transfer of the Unit to a third party, excluding sales or transfers to:
  - (i) an Owner's spouse,
  - (ii) a person cohabiting with the Owner, and
  - (iii) a corporation, partnership, company, or legal entity in which the Owner is a principal;
- (b) the failure of an Owner to lease such Owner's Unit within 90 days of the leasing permit having been issued;
- (c) the failure of an Owner to have such Owner's Unit leased for any consecutive 90-day period thereafter; or
- (d) an Owner occupies the Unit.

**8.4 Waiting List.** If the number of current leasing permits, including the request then under consideration, exceeds the Maximum Allowable Leases, no additional leasing permits shall be issued until the number of outstanding current leasing permits, including the next request under consideration, would fall at or below the Maximum Allowable Leases. Owners who have been denied a leasing permit shall automatically be placed on a waiting list for a leasing permit and shall be issued the same if they so desire when the number of current outstanding leasing permits, including the next one to be issued, falls to less than the Maximum Allowable Leases.

**8.5 Hardship Leasing.**

(a) If leasing permits equaling the Maximum Allowable Leases have been issued, an Owner who believes that he or she must lease his or her Unit to avoid undue hardship shall submit a written application to the Board setting forth the circumstances necessitating the leasing, a copy of the proposed lease, and such other information as the Board may reasonably require. Those Owners who have complied with this Section, have demonstrated that the inability to lease their Unit would result in undue hardship, and have obtained written Board approval for a hardship leasing permit may lease their Units for such duration as the Board

reasonably determines is necessary to prevent undue hardship in accordance with the terms of the hardship leasing permit.

(b) For purposes of this Section, undue hardship shall include, but not be limited to, the following situations:

(i) a Unit Owner must relocate his residence outside the greater Atlanta metropolitan area and cannot, within 6 months from the date that the Unit was placed on the market, sell the Unit except at a price below the current appraised market value, after having made reasonable efforts to do so;

(ii) the Owner is deceased and the Unit is being administered by a personal representative; or

(iii) the Owner takes a leave of absence from employment or temporarily relocates for employment purposes and intends to return to reside in the Unit, in which case the Unit Owner must reapply every year for renewal of the hardship exception.

(c) In determining whether to issue a hardship leasing permit the Board may consider the following factors, which include, but are not limited to:

(i) the nature, degree and likely duration of the hardship;

(ii) the harm, if any, which will result to the Community if the hardship leasing permit is approved;

(iii) the number of hardship leasing permits which have been issued to other Owners;

(iv) the Owner's role in causing the hardship or ability to cure the hardship; and

(v) whether previous hardship leasing permits have been issued to the Owner.

**8.6 Leasing Provisions.** Any leases that are permitted must satisfy the following provisions:

(a) Notice. At least 7 days prior to entering into the lease of a Unit, the Owner shall provide a copy of the proposed lease agreement to the Board.

(b) Form of Lease. The Board may approve or disapprove the form of said lease. If a lease is disapproved, the Board shall notify the Owner of the requisite action to be taken in order to bring the lease in compliance with the Declaration and any rules and regulations adopted pursuant thereto.

(c) General. Units may be leased only in their entirety. No fraction or portion of a Unit may be leased. There shall be no subleasing of Units or assignment of leases without prior written Board approval. Any lease must provide for a term of at least one year. Within 10 days

after executing a lease agreement for the lease of a Unit, the Owner shall provide the Board with a copy of the lease, the name of the lessee and all other people occupying the Unit and the Owner's address and other contact information other than at the Unit. The Owner must provide the lessee copies of the Governing Documents.

(d) Limitation on Board's Approval. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed lessee. The Board's approval or disapproval shall be limited to the form of the proposed lease.

(e) Liability for Assessments, Use of Common Area, and Compliance with Declaration, Bylaws, Rules and Regulations and Architectural Guidelines. Each Owner covenants and agrees that any lease of a Unit shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant, and the lessee, by occupancy of the Unit, agrees to the applicability of this covenant and incorporation of the following language into the lease:

(i) Compliance with Declaration, Bylaws, Rules and Regulations and Architectural Guidelines. The Owner's lessee shall comply with all provisions of the Governing Documents, and shall control the conduct of all other Occupants and guests of the leased Unit in order to ensure such compliance. The Owner shall cause all Occupants of the Unit to comply with the Governing Documents and shall be responsible for all violations by such Occupants, notwithstanding the fact that such Occupants of the Unit are fully liable and may be sanctioned for any such violation. If the lessee, a guest of the lessee, or a person living with the lessee, violates the Governing Documents for which a fine is imposed, notice of the violation shall be given to the Owner and the Owner's lessee, and such fine may be assessed against the lessee in accordance with Section 16.2. If the fine is not paid by the lessee within the time period set by the Board, the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Unit.

(ii) Violations of the Governing Documents. Any violation of the Governing Documents by the lessee, any Occupant, or any guest of lessee, is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with Georgia law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Governing Documents, including, without limitation, the power and authority as attorney-in-fact on behalf and for the benefit of the Owner to evict the lessee. If the Association proceeds to evict the lessee, any costs, including reasonable attorneys' fees actually incurred and court costs, associated with the eviction shall be an assessment and lien against the Unit.

(iii) Use of Common Area. The Owner transfers and assigns to the Owner's lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Area, including the Limited Common Area.

(iv) Liability for Assessments; Assignment of Rent. If an Owner who is leasing a Unit fails to pay any annual, special or specific assessment or any other charge for a

period of more than 30 days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board, the lessee shall pay to the Association all unpaid annual, special and specific assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by lessee. However, the lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by the lessee shall reduce, by the same amount, the lessee's obligation to make monthly rental payments to Owner. If the lessee fails to comply with the Board's request to pay assessments or other charges, the lessee shall pay to the Association all amounts authorized under the Declaration as if the lessee were an Owner. The above provision shall not be construed to release an Owner from any obligation, including the obligation for assessments, for which an Owner would otherwise be responsible.

**8.7 Mortgage Exemption.** The provisions of this Section shall not apply to any Mortgagee in possession of a Unit through foreclosure or otherwise as a result of the exercise of any rights arising out of a first priority Mortgage on a Unit, as provided in Section 13.3.

**8.8 Leasing Rights Reserved by Declarant.**

(a) Notwithstanding the restriction on the leasing of Units as described herein, Declarant may grant an Owner the right to lease a Unit for any reason and the extent and duration of said privilege granted by Declarant shall be determined solely by Declarant. Any ability to lease a Unit granted by the Declarant which extends beyond the termination of Declarant's rights under this Declaration shall be valid and may not be terminated by the Association so long as the Owner complies with the terms and conditions imposed by Declarant.

(b) The leasing restrictions of this Section 8 shall not apply to any Units owned by the Declarant.

**Section 9**  
**Insurance and Casualty Losses**

**9.1. Insurance Obtained by Association.**

(a) By virtue of taking title to a Unit subject to the terms of this Declaration each Owner acknowledges that the Association shall have no obligation to maintain insurance covering the personal property of an Owner or Occupant within a Unit. Each Unit Owner covenants and agrees with all other Owners to obtain and maintain the following (the policies required hereunder shall be in effect at all times):

- (i) a liability policy covering damage or injury occurring in a Unit; and
- (ii) insurance covering an Owner's or Occupant's personal property.

(b) Unless otherwise determined by resolution of the Board and at least 30 days' prior written notice to each Owner, the Association shall obtain a blanket casualty insurance policy

providing property insurance coverage for all structures constituting Units. Insurance obtained and maintained by the Association shall cover loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief 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. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

(c) The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the Persons who would be responsible for such loss in the absence of insurance. If the loss affects more than one Unit or a Unit and the Common Area, the cost of the deductible may be apportioned and assessed equitably by the Board among the parties suffering loss in accordance with the total costs of repair, unless the insurance policy provided that the deductible will apply to each Unit separately. If any Unit Owner fails to pay the deductible when required hereunder, the Association can pay the deductible and assess the cost to any such Owner pursuant to Section 4.5.

(d) If available at reasonable cost, as determined in the sole discretion of the Board, the Board shall obtain a public liability policy applicable to the Common Area insuring the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents. The public liability policy shall have a combined single limit of at least \$1,000,000.00. If available at reasonable cost, as determined in the sole discretion of the Board, the Board shall also obtain directors' and officers' liability insurance.

(e) The Board is hereby authorized to contract with or otherwise arrange to obtain the insurance coverage required hereunder through the Declarant or its affiliates, which may be under a blanket policy at the Declarant's sole discretion, and to reimburse the Person so providing or arranging the insurance coverage for the cost thereof. The Declarant or its affiliates shall be authorized, but not obligated, to purchase such insurance coverage for the benefit of the Association and the Owners upon Declarant or its affiliate, as the case may be, and the Association agreeing upon the terms and conditions applicable to reimbursement by the Association for costs incurred by Declarant or its affiliate, as the case may be, in obtaining such coverage. Notwithstanding anything contained in this Declaration to the contrary, the Board shall not be required to comply with the provisions of this Section 9 if it has contracted for or otherwise arranged to obtain the required insurance coverage through the Declarant or its affiliates.

(f) Premiums for all insurance shall be common expenses of the Association. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The premiums for property insurance which the Association maintains on behalf of the Units will, if reasonably possible, be included as a line item in the budget.

(g) All such insurance coverage obtained by the Board shall be written in the name of the Association, on its own behalf and as trustee for the respective parties which may be benefited by such insurance, as their interests may appear. Such insurance shall be governed by the provisions hereinafter set forth:

- (i) All policies shall be written with a company authorized to do business in the State of Georgia.
- (ii) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.
- (iii) In no event shall the insurance coverage obtained and maintained by the Board hereunder be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.
- (iv) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement, if these are reasonably available.
- (v) All insurance policies shall be reviewed annually by one or more qualified Persons, at least one of whom must be in the real estate industry and familiar with construction in the county where the Community is located.
- (vi) The Board shall be required to make every reasonable effort to secure insurance policies that will provide for the following:
  - (A) a waiver of subrogation by the insurer as to any claims against the Board, its manager, the Owners and their respective tenants, servants, agents and guests;
  - (B) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;
  - (C) that no policy may be canceled, subjected to nonrenewal, invalidated or suspended on account of the acts of any one or more individual Owners;
  - (D) that no policy may be canceled, subjected to nonrenewal, invalidated or suspended on account of any defect or the conduct of any director, officer or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee;
  - (E) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(F) that no policy may be canceled, subjected to nonrenewal, or substantially modified without at least 30 days' prior written notice to the Association.

(h) In addition to other insurance coverage required by this Section, the Board shall obtain workers compensation insurance, if and to the extent necessary to satisfy the requirements of applicable law.

(i) If available at reasonable cost, as determined in the sole discretion of the Board, the Board shall obtain a fidelity bond or employees dishonesty coverage covering directors, officers, employees and other Persons handling or responsible for the Association's funds. The amount of fidelity or employees dishonesty coverage, if obtained, shall be determined in the Board's judgment. Such coverage, if obtained, shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation and shall not be subject to cancellation, nonrenewal or substantial modification without at least 10 days' prior written notice to the Association.

(j) The Association shall also obtain construction code endorsements, steam boiler coverage and flood insurance, if and to the extent necessary to satisfy the requirements of The Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, the U.S. Department of Veterans Affairs ("VA") or the U.S. Department of Housing and Urban Development ("HUD").

**9.2. Damage and Destruction -- Property Insured by Association.**

(a) Immediately after the damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board 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 necessary to comply with applicable building codes.

(b) Any damage or destruction to property required to be covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within 60 days after the casualty, at least 75% of the Total Association Vote and the Declarant (in the case of property which primarily benefits or is available for use by all Owners), or Owners representing at least 75% of the applicable group or class of Units and the Declarant (in the case of property which primarily benefits or is available for use by a group or class of Owners only) otherwise agree. 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 (up to 60 days) until such information shall be made available. No Mortgagee shall

have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

(c) 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 shall, without the necessity of a vote of the Association's members, levy a special assessment against all Owners in proportion to the number of Units owned by such Owners (in the case of property which primarily benefits or is available for use by all Owners), or against all Owners in a particular group or class of Units (in the case of property which primarily benefits or is available for use by such group or class of Owners only). Additional assessments may be made in like manner 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 funds shall be deposited to the benefit of the Association.

(d) If it should be determined in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then, and in that event, the property shall be restored to its natural state and maintained as an undeveloped portion of the Community by the Association in a neat and attractive condition consistent with the Community-Wide Standard and this Declaration.

## **Section 10**

### **Annexation and Withdrawal of Property**

#### **10.1. Unilateral Annexation by Declarant.**

(a) 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 25 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 reference made a part hereof to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the Fulton County, Georgia land records a Supplementary Declaration describing the property being annexed. Any such annexation shall be effective upon the filing for record of such Supplementary Declaration unless a later effective date is provided therein. The Declarant may unilaterally amend this Declaration to reflect the different character of any such annexed real property, as long as covenants applicable to the real property previously subjected to this Declaration are not changed and as long as rights of then Owners are not adversely affected.

(b) The rights reserved unto Declarant to subject additional land to this Declaration shall not be implied or construed so as to impose any obligation upon Declarant to subject any of such additional land to this Declaration or to the jurisdiction of the Association. If such additional 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, regardless of whether such uses are consistent with the covenants and restrictions imposed herein.

**10.2. Other Annexation.** Subject to the consent of the owner thereof and consent of the Declarant (during the Declarant Control Period), upon the affirmative vote or written consent, or any combination thereof, of at least 2/3 of the Total Association Vote, the Association may annex other real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the land records of the county in which the property to be annexed is located a Supplementary Declaration describing the property being annexed. Any such Supplementary Declaration shall be signed by the President and Secretary of the Association, and any such annexation shall be effective upon the filing for record of such Supplementary Declaration, unless a later effective date is provided therein.

**10.3. Withdrawal of Property.** During the Declarant Control Period, Declarant reserves the right to amend the Declaration to remove any portion of the Community then owned by Declarant or its respective affiliates or the Association (or if not so owned, removal/withdrawal may be accomplished with the written consent of the owners of such property) from the coverage of this Declaration, so long as 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 being removed and shall be effective upon filing for record in the Office of the Clerk of the Superior Court of Fulton County, Georgia, unless a later effective date is provided therein. Such amendment shall be executed by the Declarant and the Owners of the property being removed and shall not require the vote or consent of any other Person.

**10.4. 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 and/or modify the applicability of the covenants, restrictions and easements contained in this Declaration as to such property. Such additional covenants, conditions, restrictions and easements may be set forth in a Supplementary Declaration or a separate declaration of protective covenants or other document filed either concurrently with or after the annexation of the subject property. Any such document filed by the Declarant may supplement, create exceptions to, or otherwise modify 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. No Person shall record any declaration of covenants, conditions and restrictions, 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 Fulton County, Georgia land records. No such instrument recorded by any Person, other than the Declarant pursuant to this Section, may conflict with the Governing Documents.

**Section 11**  
**Easements**

**11.1. Easements for Encroachment and Overhang.**

(a) There is hereby reserved and established by 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 Area, 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 2 feet, as measured from any point on such common boundary. In no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner or Occupant after the original construction of the Unit. If any Unit is damaged or destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, the Owner of such Unit shall have an easement to reconstruct such encroachments in connection with the reconstruction of such dwelling.

(b) Easements shall also exist for encroachment upon the Common Area and/or Units as necessary for the express purpose of maintenance, repair and restoration of any Unit, structure or improvement located thereon. The easements shall be used only for such period of time as is reasonably necessary in order to complete the needed maintenance, repair and restoration. The Owner of the Unit exercising the easement right shall be liable for the prompt repair of any damage to the property over which the easement is exercised which is caused by the maintenance, repair or restoration work. The damaged portions of such property shall be restored to substantially the same condition as existed prior to the damage. No easement for encroachment shall exist if such encroachment occurred due to willful conduct on the part of an Owner, tenant or the Association.

**11.2. Easements for Use and Enjoyment.**

(a) Every Owner of a Unit shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to his Unit, subject to the following provisions:

- (i) The Association may suspend the voting rights of a Unit Owner:
  - (A) for any period during which any assessment against such Owner's Unit remains unpaid, and
  - (B) for a reasonable period of time, for an infraction of the Governing Documents.

- (ii) The Association may:
  - (A) borrow money for the purpose of improving the Common Area, or any portion thereof, or for constructing, repairing or improving any facilities located or to be located thereon, and
  - (B) give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Area. The lien and encumbrance of any such Mortgage given by the Association must be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant and/or its affiliates, any Unit or Unit Owner, and/or the holder of any Mortgage, regardless of when executed, given by Declarant or any Unit Owner encumbering any Unit or other property located within the Community. Any provision in this Declaration or in any such Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, interests, options, easements or privileges herein reserved or established for the benefit of Declarant and/or its respective affiliates, any Unit or Unit Owner, and/or the holder of any Mortgage, regardless of when executed, given by Declarant or any Unit Owner encumbering any Unit or other property located within the Community). No such Mortgage given by the Association shall be effective unless the loan has been approved by the Declarant and, following the Declarant Control Period, at least 2/3 of the Total Association Vote.
- (iii) The Association may, acting through the Board and without a vote of the members, dedicate or grant licenses, permits, easements and rights-of-way over, under and through the Common Area.
- (iv) The Association may dedicate, transfer or convey all or any portion of the Common Area subject to such conditions as may be agreed to by the members of the Association. No such dedication or transfer shall be effective unless the dedication or transfer has been approved by Declarant and, following the Declarant Control Period, at least 2/3 of the Total Association Vote.
- (v) Use of Common Area is subject to all other rights of the Association, the Declarant, Owners and Occupants set forth in this Declaration, any Supplementary Declaration, or in any deed conveying Common Area to the Association.
- (vi) Use of Common Area is subject to encumbrances and other matters shown by the public records affecting title to the Common Area.

(b) Any Unit Owner may delegate his or her right of use and enjoyment in and to the Common Area and facilities located thereon to the members of his immediate family, his tenants and guests and shall be deemed to have made a delegation of all such rights to the Occupants of such Owner's Unit if leased.

**11.3. Association Easements for Utilities.**

(a) Declarant hereby establishes for the benefit of each Unit a nonexclusive easement for access to and installation, maintenance, repair, replacement and use of all pipes, wires, cables, conduits, utility lines, flues and ducts serving such Unit and situated in, on or under any other Unit or the Common Property. If any Owner desires access to another Unit to install, maintain, repair or replace any utility pipe, wire, cable, conduit, utility line, flue or duct, the Owner shall contact the Owner of such other Units at least 2 days in advance of the date that access is needed and attempt to agree on a convenient date and time for access by the Owner and the Owner's contractors. Access in emergency situations shall be granted promptly upon request. Any Owner of a Unit to which access is needed under this Section shall not unreasonably withhold, condition or delay such access. Rights exercised pursuant to this easement shall be exercised with a minimum of interference to the quiet enjoyment of affected Units, reasonable steps shall be taken to protect such Units and the property of the Owners and Occupants thereof, and damage shall be repaired by the Person causing the damage at its sole expense.

(b) There is hereby reserved to the Declarant and granted to utility providers and the Association blanket easements upon, across, above and under all property within the Community for access, ingress, egress, installing, 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 utilities, 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 Association might decide to have installed to serve the Community. However, such easement area shall not include any portion of a Unit within the outer perimeter of the dwelling structure.

(c) It shall be expressly permissible for the Declarant, the Association, or their respective designees, as the case may be, to install, repair, replace and maintain, or to authorize the installation, repair, replacement and maintenance of such wires, conduits, cables and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Board shall have the right to grant such easement.

**11.4. Easements for Association Maintenance.** Declarant hereby grants to the Association a perpetual easement across such portions of the Community, determined in the sole discretion of the Association, as are necessary to allow for the maintenance required under Section 5. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment of Owners' property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

**11.5. Easements for Maintenance and Repair.** There shall be reciprocal appurtenant easements between adjacent Units for the purpose of maintaining or repairing Units, which easement shall extend to a distance of not more than 5 feet as measured from any point on the common boundary between the Units and along a line perpendicular to such boundary at such point. The easement shall be used only for such period of time as is reasonably necessary in order to complete the needed maintenance or repair. The Unit Owner exercising this easement right shall be liable for the prompt repair of any damage to the Unit over which this easement is exercised which is caused by the maintenance or repair work. The damaged portions of such Unit shall be restored to substantially the same condition as existed prior to the damage.

**11.6. Easements for Entry.** In addition to the right of the Board to exercise self-help as provided in Section 16.3, the Board shall have the right, but shall not be obligated, to enter upon any property within the Community for emergency, security and safety reasons, which right may be exercised by the property manager 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, and the entering party shall be responsible for any damage caused. This right of entry shall include the right of the Board to enter to cure any condition which may increase the possibility of a fire, slope erosion or other hazard if an Owner or Occupant fails or refuses to cure the condition upon request by the Board.

**11.7. Easements for Entry Features and Street Signs.** There is hereby reserved to the Declarant and granted to the Association, and their respective designees, an easement over and upon all of the Community for ingress to, egress from, installation, construction, landscaping and maintenance of entry features and street signs 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 all entry features and the right to grade the land under and around such entry features.

**11.8. Easements for Drainage.**

(a) There is hereby reserved by the Declarant and granted to the Association and to the appropriate county or city authority an easement upon, across, above and under all storm water drainage easement areas as shown on the recorded subdivision plats for the Community for access, ingress, egress, installation, alteration, repair, replacement, and maintenance of the storm water drainage system and related facilities serving the Community or any portion thereof. 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.

(b) There is hereby reserved to the Declarant and granted to the Association a blanket easement across the Community for creating and maintaining satisfactory drainage in the Community; provided, however, such easement area shall not include any portion of a Unit within the outer perimeter of the dwelling structure. It is anticipated that increased storm water run-off across downstream Units will result from the construction of impervious surface in the Community. Neither the Declarant, the Association nor any other builder or Owner constructing

according to plans and specifications approved under Section 7 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.

## **Section 12** **Condemnation**

If all or any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board, acting on behalf of the Association or on the written direction of all Owners of Units subject to the taking, if any) by any authority having the power of condemnation or eminent domain, the Association shall represent the Owners. The award made for such taking shall be payable to the Association as trustee for all Owners. The provisions of Section 9.2 above, applicable to damage or destruction of property insured by the Association, shall govern replacement or restoration and the actions to be taken if the improvements are not restored or replaced. Any and all condemnation proceeds relating to Common Area shall remain the property of the Association. No portion of any condemnation proceeds related to Common Area shall be paid or payable to any Owners or their Mortgagees.

## **Section 13** **Mortgagee Provisions**

**13.1. General.** The following provisions are for the benefit of holders of first Mortgages on Units in the Community. The provisions of this Section apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

**13.2 Notices of Action.** An institutional holder, insurer or guarantor of a first Mortgage who provides 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 60 days;
- (c) any default in the performance by an Owner of a Unit of any obligation under the Declaration or Bylaws of the Association which is not cured within 60 days;
- (d) any lapse, cancellation or material modification of any insurance policy maintained by the Association; or
- (e) any proposed action which would require the consent of a specified percentage of Mortgage holders.

**13.3 No Priority.** No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first 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.

**13.4 Notice to Association.** Upon request, each Unit Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

**13.5 Amendments by Board.** Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete or modify any of their respective requirements that affect this Declaration, the Association or the Board, without approval of the Owners, may cause an amendment to this Section to be recorded to reflect such changes.

**13.6 Applicability of Section 13.** Nothing contained in this Section shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or Georgia law for any of the acts set out in this Section.

**13.7 Failure of Mortgagee to Respond.** Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within 30 days of the date of the Association's request.

## **Section 14**

### **Use of Recreational Facilities by Nonmembers**

#### **14.1. Grant of Rights to Nonmembers.**

(a) The Board shall have the right to grant to Persons who are not members of the Association the right to use the Community recreational facilities. These rights may be granted to a Person on a temporary, limited basis or as an annual membership (so long as it does not automatically renew), with such limitations on the scope of the rights as the Board may determine. The Board may also grant an easement appurtenant to a Person's residential real property so that such use rights shall automatically inure to the benefit of both the original grantees and their respective successors-in-title to such real property.

(b) The Board may also enter into an easement and cost sharing agreement, as authorized pursuant to Section 5.2, to provide nonmembers in another community with the right to use and enjoy the Community recreational facilities.

(c) The use rights granted under this Section 14 expressly include the right of access, ingress to, use and egress from for vehicular and pedestrian traffic over, under, on and across the Community roads, alleys, parking areas and walkways in order to access the Community recreational facilities.

(d) Any use rights granted to nonmembers may not be terminated by the Association so long as the terms and conditions imposed upon nonmember use by the Board (including payment of fees) are complied with by the nonmember user.

(e) During the Declarant Control Period, the Board may not grant any rights under this Section 14 without the consent of the Declarant. After the end of the Declarant Control Period, the Board may take action under this Section 14 without seeking approval of the Declarant or any of the Owners.

**14.2. Payment of Fees by Nonmembers; Remedies.**

(a) The Board shall charge fees for the use of the Community recreational facilities by nonmembers to cover, at least in part, the cost associated with the additional use of such facilities. Unless the Board decides to impose less stringent requirements, such fees must be paid to the Association in one installment in advance of using the facilities.

(b) If a nonmember fails to pay a nonmember user fee to the Association when required to do so by this Section, the Association's remedy shall be to suspend the use right of the nonmember who has not timely paid until all amounts owed are paid. If an easement and cost sharing agreement or similar document has been entered into, the Association may also exercise any remedy described in such document.

**14.3. Capacity of Facilities.** The rights granted under this Article for use of the Community recreational facilities shall be subject to any applicable limitations on bathing load for any swimming pool that may be a part of such facilities and other limitations on capacity of any of such facilities as may be established by any applicable government law, ordinance, rule or regulation.

**14.4. No Liability to Declarant.** Declarant shall not be liable for failure of any nonmember to pay any fees due for use of the facilities. Declarant shall also not be liable for and is hereby held harmless from any personal injury or property damage caused by nonmembers, their family, guests and invitees, exercising any rights hereunder.

**Section 15**  
**Amendments**

**15.1 Unilateral Amendments By Declarant.** 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, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Units subject to this Declaration; or
- (d) if such amendment is necessary to enable any governmental agency or reputable private insurance company to guarantee or insure Mortgage loans on the Units subject to this Declaration. Any such amendment may not adversely affect the title to any Owner's Unit unless any such Unit Owner shall consent thereto in writing.

**15.2 Amendments During Declarant Control Period.** During the Declarant Control Period, Declarant may unilaterally amend this Declaration for any other purpose (beyond the list in Section 15.1). Any such amendment may not:

- (a) materially adversely affect the substantive rights of any Owners hereunder;
- (b) adversely affect title to any Unit without the consent of the affected Owner; or
- (c) adversely affect the rights of the holder of any security interest granted by Declarant encumbering any portion of the Community unless the holder thereof consents thereto in writing.

**15.3 Amendments By the Members.** In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of at least 2/3 of the Total Association Vote and the written consent of the Declarant (during the Declarant Control Period).

**15.4 General.** Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified therein. During the Declarant Control Period, no provision of this Declaration which reserves or grants special rights to the Declarant and/or its respective affiliates shall be amended without the prior written consent of the Declarant and/or its respective affiliates affected by such amendment. Any lawsuit challenging any aspect of an amendment to this Declaration must be filed in a court of competent jurisdiction in a county in which the Community is located within 1 year of the recordation of such amendment.

**Section 16**  
**Enforcement and Remedies**

**16.1. Enforcement.**

(a) Each Owner and every Occupant of a Unit shall comply strictly with the Governing Documents, as they may be lawfully amended or modified from time to time, and with the covenants, conditions and restrictions set forth in this Declaration and in the deed to his or her Unit, if any.

(b) The Board may exercise any of the remedies set forth herein, including, without limitation the following:

- (i) impose fines following the process outlined in Section 16.2 or other sanctions as provided herein;
- (ii) the remedies set forth in Section 4.7 relating to nonpayment of assessments;
- (iii) the remedies set forth in Section 5.3(c) for failure to perform maintenance and
- (iv) the remedies set forth in Section 6 for failure to follow the use restrictions and rules.

(c) Failure to comply with this Governing Documents shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board, on behalf of the Association, or, in a proper case, by an aggrieved Owner.

(d) Failure by the Association or any Owner to enforce any of the foregoing against any Owner shall in no event be deemed a waiver of the right to do so thereafter against that Owner or any other Owner failing to comply in a similar manner.

(e) The Board shall have the right to record in the appropriate land records a notice of violation of the Governing Documents and to assess the cost of recording and removing such notice against the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

**16.2 Fining Procedure.** The Board may impose a fine (a late charge shall not constitute a fine) against an Owner as long as the following procedure is followed:

(a) Demand. Written demand to cease and desist from an alleged violation shall be served upon the alleged violator specifying:

- (i) the alleged violation;

(ii) the action required to abate the violation; and

(iii) a time period, not less than 10 days, during which the violation may be abated without further sanction, if such violation is a continuing one, or a statement that any future violation of the same rule may result in the imposition of a fine, if the violation is not continuing. The Board or its designee may demand immediate abatement in circumstances which, in the Board's determination, pose a danger to safety or property.

(b) Notice. If the violation continues past the period allowed in the demand for abatement without penalty, or if the same rule is subsequently violated, the Board may, upon notice stating the nature of the violation, impose a fine within 12 months of such demand. Such fines may be effective upon sending the notice outlined in this subsection (b) hereof. Such notice shall state a time period, not less than 10 days, during which the violator may request, in writing, a hearing regarding the proposed fine and violation. All rights to have the fine reconsidered are waived if a hearing is not requested within 10 days from the date of the notice. The violator may produce any statements, evidence, and witnesses at the hearing. If a hearing is requested within the requisite time provided above, it shall be held before the Board in executive session, and the violator shall be given a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing.

**16.3. Self-Help.** In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon a Unit or any portion of the Common Area to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates the Governing Documents. Unless an emergency situation exists, the Board shall give the violating Unit Owner 10 days' written notice of its intent to exercise self-help. All costs of self-help, including reasonable attorney's fees actually incurred, shall be assessed against the violating Unit Owner and shall be collected as provided for herein for the collection of assessments.

## **Section 17** **General Provisions**

### **17.1. Duration.**

(a) The covenants and restrictions of this Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors and assigns, perpetually to the extent permitted by law. However, if Georgia law limits the period during which covenants restricting lands 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 provisions shall be:

- (i) automatically extended for successive periods of 10 years, unless a written instrument reflecting disapproval signed by the then Owners of at least 2/3 of the Total Association Vote and the Declarant (during the Declarant Control Period) has been recorded within the year immediately preceding

the beginning of a 10 year renewal period agreeing to change such provisions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated to the extent specified therein; or

(ii) extended as otherwise provided by law.

(b) Every purchaser or grantee of any interest (including, without limitation, a security interest) in any real property subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that such provisions of this Declaration may be extended and renewed as provided in this Section.

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

**17.3. 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.

**17.4. Captions.** The captions of each Section hereof, as to the contents of each 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 Section to which they refer.

**17.5. Indemnification.** In accordance with, and to the full extent allowed by, the Georgia Nonprofit Corporation Code, the Association shall indemnify every Person who was or is a party or who is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association), by reason of the fact that such Person is or was serving as a director or officer of the Association against any and all expenses, including attorney's fees, imposed upon or reasonably incurred in connection with any action, suit or proceeding, if such Person acted in a manner reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Any indemnification hereunder shall be made by the Association only as authorized in a specific case upon a determination that indemnification of the Person is proper under the circumstances.

**17.6. Books and Records.**

(a) Inspection by Members and Mortgagees. The Governing Documents, membership register, books of account and minutes of meetings of the members of the Board and of committees shall be made available for inspection and copying by any Owner or by his duly

appointed representative and by holders, insurers or guarantors of any first Mortgage at any reasonable time and for a purpose reasonably related to his or her interest as a member or holder, insurer or guarantor of a first Mortgage at the office of the Association or at such other reasonable place as the Board shall prescribe.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing copies of documents.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extra copies of documents at the reasonable expense of the Association.

**17.7. Financial Statements.** Financial statements for the Association shall be compiled annually in the manner as the Board may decide. After having received the Board's financial statements at the annual meeting, the Owners, by a Majority of the Total Association Vote, may require that the financial statements of the Association be audited as a common expense by a certified public accountant. Upon written request of any institutional holder of a first Mortgage and upon payment of all costs associated therewith, such holder shall be entitled to receive a copy of the audited financial statements of the Association within 90 days of the date of the request.

**17.8. Notice of Sale.** If an Owner sells or leases his or her Unit, the Owner shall, within 10 days after the sale of a Unit, give to the Association, in writing, the name of the purchaser or lessee of the Unit and such other information as the Board may reasonably require. Owners must also notify the Association of leases as specified in Section 8.

**17.9. Board Agreements and Actions Binding on All.** All agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, Mortgagees, and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community. During the Declarant Control Period, all such agreements and determinations are subject to the approval of the Declarant.

**17.10. Variances.** Notwithstanding anything to the contrary contained herein, the Board shall be authorized to grant individual variances from any of the provisions of the Governing Documents if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Community.

**17.11. Litigation.**

(a) No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least 75% of the Total Association Vote and, during the Declarant Control Period, by Declarant. This Section shall not apply, however, to:

- (i) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens);
- (ii) the imposition and collection of assessments as provided in Section 4;
- (iii) proceedings involving challenges to ad valorem taxation;
- (iv) counterclaims brought by the Association in proceedings instituted against it; or
- (v) 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.

(b) This Section shall not be amended unless such amendment is made by the Declarant pursuant to Section 15, or is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

**17.12. Implied Rights.** The Association may exercise any right or privilege given to it expressly by Governing Documents, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

**17.13. Security.** The Declarant and the Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to make the Community and the Units safer than they otherwise might be. HOWEVER, THE ASSOCIATION, THE DECLARANT, ITS PARTNERS AND AFFILIATES, ANY SUCCESSOR DECLARANT, AND THE OFFICERS, DIRECTORS, COMMITTEES, MEMBERS, SHAREHOLDERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS OF THE FOREGOING, SHALL NOT IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE COMMUNITY, NOR SHALL ANY OF THE FOREGOING BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR OF INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND COVENANTS TO INFORM ITS TENANTS THAT THE ASSOCIATION, THE

DECLARANT, ITS PARTNERS AND AFFILIATES, ANY SUCCESSOR DECLARANT, AND THE OFFICERS, DIRECTORS, COMMITTEES, MEMBERS, SHAREHOLDERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS OF THE FOREGOING, ARE NOT INSURERS AND THAT EACH PERSON USING THE COMMUNITY ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO PROPERTY, TO LOTS, AND TO THE CONTENTS OF LOTS AND THE STRUCTURES THEREON RESULTING FROM ACTS OF THIRD PARTIES. THE RESPONSIBILITY FOR SECURITY LIES SOLELY WITH THE OWNER OF A LOT IN THE COMMUNITY.

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

### **Section 18** **Declarant Rights**

#### **18.1. Conveyance of Property to Association; No Implied Rights.**

(a) Declarant and its respective affiliates 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. This may include the conveyance of small strips or parcels of land throughout the Community that have not otherwise been conveyed to Owners, even if the strips or parcels do not have any use or the strips or parcels create an additional maintenance burden on the Association. Such conveyance shall be accepted by the Association, and the property shall thereafter be Common Area to be maintained by the Association for the benefit of all or a part of its members.

(b) During the Declarant Control Period, Declarant may, upon written notice to the Association, require the Association to reconvey to Declarant or its designee all or any portion of the Common Area, improved or unimproved, at no charge to Declarant or its designee, without a vote of the members of the Association, if all or a portion of the Common Area is:

- (i) found by Declarant to have been conveyed in error;
- (ii) needed by Declarant to make adjustments in property boundary lines; or
- (iii) reasonably determined by Declarant to be needed due to changes in the overall scheme of development for the Community.

(c) The Association hereby constitutes and appoints Declarant as the Association's agent and attorney-in-fact to accept/make on behalf of the Association any such conveyances and reconveyances and to execute on behalf of the Association any and all documents, including, without limitation, deeds, necessary or convenient to effectuate and document any of the foregoing conveyances and reconveyances, and all of the acts of such attorney-in-fact are hereby ratified. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise.

(d) Declarant and its affiliates shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section and Declarant and its affiliates 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 Association shall also accept assignment of, and shall assume and agree to perform, any contracts entered into by Declarant and its affiliates for the benefit of the Association, its members or the Owners.

(e) Declarant may reserve, by condition, restriction, lease, license, easement or otherwise, such rights of use and enjoyment in and to all or any portion of the property 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 to the Association or the Owners, as the case may be, by an instrument recorded in the land/real estate records of the county where the property is located.

## **18.2. Construction and Sale Period.**

(a) Notwithstanding any provisions contained in the Governing Documents, the Declarant hereby expressly reserves unto itself, and its respective successors and assigns a non-exclusive, perpetual right, privilege, and easement with respect to the Community for the benefit of the Declarant and its respective successors and assigns, over, under, in, and/or on the Community, without obligation and without charge, for the purposes of taking all actions related to or connected with construction, installation, relocation, development, sale, maintenance, repair or replacement in the Community and any other property now owned or which may in the future be owned by the Declarant in accordance with Declarant's right to annex additional property.

(b) The reserved easement shall constitute a burden on the title to the Community and specifically includes, but is not limited to:

- (i) the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the Community;
- (ii) the right to tie into any portion of the Community with streets, driveways, parking areas and walkways;
- (iii) the right to tie into and/or otherwise connect and use (without a tap-on or any other fee payable to the Association or any Owner for so doing), replace, relocate, maintain and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community;

- (iv) the right to use (continually or from time to time) without charge any clubhouse or similar structure and appurtenant recreational facilities, if any, for business purposes or company functions and any similar use, including, but not limited to, sales and marketing meetings, offices for sales or other employees and agents, a design studio and employee parties; and
- (v) the right to construct, install, replace, relocate, maintain, repair, use and enjoy signs, model residences, construction trailers and sales offices in the Community.

(c) Declarant, however, hereby expressly reserves the right to dump and bury rocks on property within the Community as needed for efficient construction.

(d) No rights, privileges and easements granted or reserved herein shall be merged into the title of any property, including, without limitation, the Community, but shall be held independent of such title, and no such right, privilege or easement shall be surrendered, conveyed or released unless and until and except by delivery of a quitclaim deed from the Declarant releasing such right, privilege or easement by express reference thereto.

(e) During the Declarant Control Period, any proposed amendment to this Section 18.2 shall require the prior written consent of the Declarant.

**18.3. Assignment of Declarant Rights.** The Declarant may assign its rights, duties and privileges as “Declarant” to another party. Any successor Declarant must be the purchaser (for the purpose of development or sale) of all or any portion of the remaining undeveloped or unsold portions of the real property described in Exhibit “A”, attached hereto, or in Exhibit “B”, attached hereto. In the instrument of conveyance to any such successor or in a separate recorded document, the prior Declarant must designate the successor party as the “Declarant” hereunder. Upon designation of such successor Declarant, all rights of the former Declarant in and to such status as “Declarant” hereunder shall cease. As to all of the property described in Exhibit “A”, attached hereto, and in Exhibit “B”, attached hereto, which is now or hereafter subjected to this Declaration, there shall be only one Person or legal entity entitled to exercise the rights and powers of the “Declarant” hereunder at any one point in time.

IN WITNESS WHEREOF, the Declarant, has caused this Declaration to be executed under seal as of April 2, 2015.

DECLARANT:

**JW HOMES, LLC,**  
a Delaware limited liability company

By: [Signature] (SEAL)  
Name: Joel S. Reed  
Title: Sr. Vice President

Signed, sealed, and delivered  
in the presence of:

[Signature]  
WITNESS Andrew McBride

[Signature]  
NOTARY PUBLIC

My Commission Expires:



CONSENT OF LENDER

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent (collectively with its successors or assigns, "Lender"), for its benefit and the benefit of the Lender Parties, as defined in that certain Credit Agreement dated as of January 28, 2014 by and among JW Homes, LLC ("Borrower"), Lender, and the financial institutions party thereto and their assignees under Section 13.6 therein, is the holder of that certain Deed to Secure Debt with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing (hereinafter, the "Security Deed") encumbering all or a portion of the property described in this document.

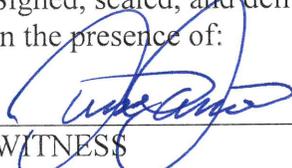
Lender hereby consents to the execution and recording of the Declaration of Protective Covenants for Overture at Encore, and to the plat or plats creating the Units that constitute the Community (the "Plats"), and agrees that any foreclosure of the security title and interest under the Security Deed or any other instrument evidencing or securing Lender's interest shall be subject and subordinate to this document and the Plats and any amendments thereto as it affects the Property.

Effective as of April 2, 2015.

LENDER:  
WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent

By:   
Name: Billy C. Olson  
Title: Vice President

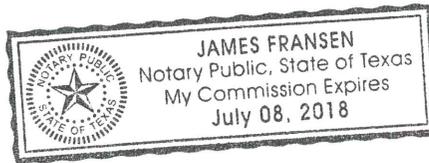
Signed, sealed, and delivered  
in the presence of:

  
WITNESS

  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

[NOTARY SEAL]



**EXHIBIT "A"**Property Subject to Declaration

All that tract or parcel of land lying and being in Land Lots 652 & 653 of the 1<sup>st</sup> District, 2<sup>nd</sup> Section, City of Alpharetta, Fulton County, Georgia, and being more particularly described as follows:

**BEGINNING** at a 1/2" rebar set at the intersection of the common line of Land Lots 640 and 653 and the northwesterly right of way of Westside Parkway (right of way varies); thence along said common line of Land Lots 640 and 653 N00°15'23"E for a distance of 862.69 feet to a 1/2" rebar set; thence leaving said Land Lot Line N47°29'48"E for a distance of 247.68 feet to a 1/2" rebar set; thence along a curve turning to the left for an arc length of 201.03 feet, said curve having a radius of 152.74 feet and being subtended by a chord bearing of S72°20'58"E and chord distance of 186.83 feet to a 1/2" rebar set; thence N62°23'36"E for a distance of 58.52 feet to a 1/2" rebar set; thence N41°11'12"E for a distance of 270.62 feet to a 1/2" rebar set; thence S87°24'33"E for a distance of 98.00 feet to a 1/2" rebar set on the westerly right of way of Encore Parkway (86' right of way); thence along said right of way of Encore Parkway the following courses and distances: thence S25°54'10"W for a distance of 33.71 feet to a point; thence along a curve turning to the left for an arc length of 403.49 feet, said curve having a radius of 313.00 feet and being subtended by a chord bearing of S11°01'41"E and chord distance of 376.13 feet to a point; thence S47°57'31"E for a distance of 48.73 feet to a point at the northerly corner of the mitered right of way intersection of the westerly right of way of Encore Parkway and the northwesterly right of way of Westside Parkway; thence along said mitered right of way S04°16'01"E for a distance of 51.84 feet to a point at the southern corner of said mitered right of way; thence along said right of way of Westside Parkway the following courses and distances: thence S44°16'02"W for a distance of 186.39 feet to a point; thence along a curve turning to the right for an arc length of 203.19 feet, said curve having a radius of 2400.56 feet and being subtended by a chord bearing of S46°41'31"W and chord distance of 203.13 feet to a point; thence S49°07'01"W for a distance of 70.29 feet to a point; thence N43°46'29"W for a distance of 3.17 feet to a point; thence S48°32'38"W for a distance of 6.40 feet to a point; thence S42°24'53"E for a distance of 3.10 feet to a point; thence S49°07'01"W for a distance of 490.16 feet to a point; thence N40°52'59"W for a distance of 3.28 feet to a point; thence S49°07'01"W for a distance of 6.58 feet to a point; thence S40°52'59"E for a distance of 3.28 feet to a point; thence S49°07'01"W for a distance of 103.45 feet to the **POINT OF BEGINNING**.

Said tract contains 11.690 acres.

**EXHIBIT "B"**

Additional Property which can be Unilaterally  
Subjected to Declaration by Declarant

Any land located within a 5 miles radius of the northeast corner of the intersection of Westside Parkway and Encore Parkway, City of Alpharetta, Fulton County, Georgia.

**STAMP  
ADDED  
TO CAPTURE  
IMAGE**

**EXHIBIT "C"**

Bylaws of Overture at Encore Neighborhood Association, Inc.

**BYLAWS**

**OF**

**OVERTURE AT ENCORE NEIGHBORHOOD ASSOCIATION, INC.**

**STAMP  
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**- TABLE OF CONTENTS -**

<b><u>SECTION</u></b>	<b><u>PAGE</u></b>
1. NAME, MEMBERSHIP AND DEFINITIONS .....	1
1.1. Name .....	1
1.2. Membership .....	1
1.3. Definitions.....	1
2. ASSOCIATION: MEETINGS, QUORUM, VOTING, PROXIES.....	1
2.1. Place of Meetings.....	1
2.2. First Meeting and Annual Meetings .....	1
2.3. Special Meetings .....	1
2.4. Notice of Meetings.....	1
2.5. Waiver of Notice.....	2
2.6. Adjournment of Meetings .....	2
2.7. Voting .....	2
2.8. Proxies.....	2
2.9. Quorum .....	2
2.10. Action by Written Consent .....	2
2.11. Action by Written Ballot.....	3
3. BOARD OF DIRECTORS: NUMBER, POWERS, MEETINGS.....	3
A. <u>Composition and Selection</u> .....	3
3.1. Governing Body; Composition.....	3
3.2. Directors Appointed by Declarant .....	3
3.3. Number of Directors .....	4
3.4. Nomination of Directors .....	4
3.5. Election and Term of Office .....	4
3.6. Removal of Directors.....	4
3.7. Vacancies .....	4
B. <u>Meetings</u> .....	5
3.8. Organizational Meetings.....	5
3.9. Regular Meetings .....	5
3.10. Special Meetings.....	5
3.11. Waiver of Notice.....	5
3.12. Quorum of Board of Directors.....	5
3.13. Compensation .....	6
3.14. Open Meetings .....	6
3.15. Executive Session .....	6

3.16. Action without a Formal Meeting.....6

3.17. Telephonic Participation .....6

C. Powers and Duties.....6

3.18. Powers.....6

4. OFFICERS .....7

4.1. Officers .....7

4.2. Election, Term of Office and Vacancies.....8

4.3. Removal .....8

4.4. President.....8

4.5. Vice President .....8

4.6. Secretary .....8

4.7. Treasurer .....8

4.8. Resignation .....8

5. COMMITTEES.....8

6. MISCELLANEOUS .....9

6.1. Fiscal Year .....9

6.2. Parliamentary Rules .....9

6.3. Conflicts.....9

6.4. Amendment.....9

6.5. Electronic Records, Signatures and Documents .....9

**BYLAWS**  
**OF**  
**OVERTURE AT ENCORE NEIGHBORHOOD ASSOCIATION, INC.**

**Section 1**  
**Name, Membership and Definitions**

1.1. **Name.** The name of the Association shall be Overture at Encore Neighborhood Association, Inc. (the "Association").

1.2. **Membership.** The Association shall have one class of membership, as is more fully set forth in the Declaration of Protective Covenants for Overture at Encore (such Declaration, as amended, supplemented, renewed, or extended from time to time, is hereinafter sometimes referred to as the "Declaration"), the terms of which pertaining to membership are specifically incorporated by reference herein.

1.3. **Definitions.** The words used in these Bylaws shall have the same meaning as set forth in the Declaration, unless the context shall prohibit.

**Section 2**  
**Association: Meetings, Quorum, Voting, Proxies**

2.1. **Place of Meetings.** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the members as may be designated by the Board of Directors, either in the Community or as convenient thereto as possible and practical.

2.2. **First Meeting and Annual Meetings.** An annual or special meeting shall be held within one year from the date the Declaration is recorded. Annual meetings shall be set by the Board so as to occur no later than 60 days after the close of the Association's fiscal year or at such other date and time as the Board of Directors may decide in its sole discretion. If the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday (excluding Saturday and Sunday).

2.3. **Special Meetings.** The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of a Majority of the Board of Directors or upon a petition signed by at least 25% of the Total Association Vote (the separate consent of Declarant shall not be required). The notice of any special meeting shall state the date, time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting, except as stated in the notice.

2.4. **Notice of Meetings.** It shall be the duty of the Secretary of the Association to mail or to cause to be delivered to the Owner of record of each Unit a notice of each annual or special meeting of the Association stating the time and place where it is to be held and, for a

special meeting, the purpose thereof. If an Owner wishes notice to be given at an address other than his or her Unit, he or she shall have designated by notice in writing to the Secretary of the Association such other address. The mailing or delivery of a notice of meeting in the manner provided in this Section shall be considered service of notice. Notices shall be served not less than 10 nor more than 30 days before the date of a meeting.

**2.5. Waiver of Notice.** Waiver of notice of a meeting of the members shall be deemed the equivalent of proper notice. Any member may, in writing, waive notice of any meeting of the members, either before or after such meeting. Attendance at a meeting by a member, whether in person or by proxy, shall be deemed a waiver by such member of notice of the time, date and place thereof, unless such member specifically objects to lack of proper notice at the time the meeting is called to order.

**2.6. Adjournment of Meetings.** If any meetings of the Association cannot be held because a quorum is not present, a Majority of the members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than 5 nor more than 30 days from the time the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

**2.7. Voting.** The voting rights of the members shall be as set forth in the Declaration, and such voting rights are specifically incorporated herein.

**2.8. Proxies.** At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing, dated, and filed with the Secretary of the Association before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his or her Unit, or upon receipt of notice by the Secretary of the Association of the death or judicially declared incompetence of a member, or of written revocation, or upon the expiration of 11 months from the date of the proxy.

**2.9. Quorum.** The presence, in person or by proxy, of 25% of the total eligible Association vote shall constitute a quorum at all meetings of the Association. The members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

**2.10. Action by Written Consent.** Any action to be taken at a meeting of the members, or any action that may be taken at a meeting of the members, may be taken without a meeting if one or more consents, in writing, setting forth the action so taken shall be signed by members holding the voting power required to pass such action at a meeting held on the date that the last consent is executed and such action is consented to by Declarant (if required during the Declarant Control Period). Such action shall be effective upon receipt by the Association of a sufficient number of such consents executed by current members unless a later effective date is specified therein. Such action shall be approved when the Secretary receives a sufficient number of such consents dated within 70 days of the record date for such action. If less than unanimous

consent is obtained, the approval shall be effective 10 days after the Secretary gives written notice of the approval to all members who did not sign a consent. Each consent in writing or by electronic transmission shall be included in the minutes of meetings of members filed in the permanent records of the Association. No consent in writing or by electronic transmission shall be valid unless: (1) the consenting member has been furnished the same material that, pursuant to the Nonprofit Code, would have been required to be sent to members in a notice of a meeting at which the proposed action would have been submitted to the members for action; or (2) the written consent contains an express waiver of the right to receive the material otherwise required to be furnished.

**2.11. Action by Written Ballot.** Any action to be taken at any annual, regular or special meeting of members may be taken without a meeting if approved by written ballot as provided herein. The Association shall deliver a written ballot to each member entitled to vote on the matter. The written ballot shall set forth each proposed action and, except in the case of the election of directors, provide an opportunity to vote for or against each proposed action. Approval by written ballot of an action shall only be valid when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting held to authorize such action and, except in the case of the election of directors, the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. All solicitations for votes by written ballot shall: (a) indicate the number of responses needed to meet the quorum requirements; (b) state the percentage of approvals necessary to approve each matter (other than election of directors); and (c) specify the time by which a ballot must be received by the Association in order to be counted. A timely written ballot received by the Association may not be revoked without the consent of the Board of Directors. The results of each action by written ballot shall be certified by the Secretary of the Association and shall be included in the minutes of meetings of members filed in the permanent records of the Association.

### Section 3

#### **Board of Directors: Number, Powers, Meetings**

##### **A. Composition and Selection.**

**3.1. Governing Body; Composition.** The affairs of the Association shall be governed by a Board of Directors. Except as provided in Section 3.2, the directors must reside in the Community and shall be members or spouses of such members; provided, however, no Person and his or her spouse may serve on the Board at the same time.

**3.2. Directors Appointed by Declarant.** The Declarant shall have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association until the expiration or earlier termination of the Declarant Control Period. Each Owner, by acceptance of a deed to or other conveyance of a Unit, vests in Declarant such authority to appoint and remove directors and officers of the Association as provided herein. The directors appointed by the Declarant need not be Owners or residents in the Community.

**3.3. Number of Directors.** During the period in which the Declarant has the right to appoint and remove the officers and directors of the Association, the Board of Directors shall consist of 1 to 5 members, determined by the Declarant from time to time in writing in its sole discretion. After the right of the Declarant to appoint and remove the directors and officers of the Association expires as provided in Section 3.2 above, the Board of Directors shall consist of 3 members who shall be elected as provided below.

**3.4. Nomination of Directors.** Elected directors may be nominated from the floor and may also be nominated by a nominating or elections committee, if such a committee is established by the Board. All candidates shall have a reasonable opportunity to communicate their qualifications to the members and to solicit votes.

**3.5. Election and Term of Office.** Owner-elected directors shall be elected and hold office as follows:

(a) After Declarant's right to appoint directors and officers terminates, the Association shall call a special meeting to be held at which Owners shall elect directors.

(b) At annual meetings of the membership thereafter (or by written consent or written ballot in lieu of a meeting as provided in Sections 2.10 and 2.11 hereof), directors shall be elected. All eligible members of the Association shall vote on all directors to be elected, and the candidates receiving the most votes shall be elected; provided, however, the initially elected directors shall serve the remainder of their terms.

(c) The directors shall be elected at-large by all of the Owners in the Community.

(d) It is intended that the elected directors serve staggered terms. Accordingly the initial term of one director shall be fixed at one year, the initial term of one director shall be fixed at 2 years, and the initial term of one director shall be fixed at 3 years. At the expiration of the initial term of office of each respective member of the Board of Directors, a successor shall be elected to serve for a term of 2 years. The members of the Board of Directors shall hold office until their respective successors shall have been elected by the Association.

**3.6. Removal of Directors.** At any regular or special meeting of the Association duly called, any one or more of the members of the Board of Directors may be removed, with or without cause, by a Majority of the Total Association Vote and a successor may then and there be elected to fill the vacancy thus created. A director whose removal has been proposed by the Owners shall be given at least 10 days' notice of the meeting and the purpose thereof and shall be given an opportunity to be heard at the meeting. Additionally, any director who has 3 consecutive unexcused absences from Board meetings or who is delinquent in the payment of any assessment for more than 20 days may be removed by a Majority vote of the directors at a meeting, a quorum being present. This Section shall not apply to directors appointed by Declarant.

**3.7. Vacancies.** Vacancies in the Board of Directors caused by any reason, excluding the removal of a director by vote of the Association, shall be filled by a vote of the Majority of

the remaining directors, even though less than a quorum, at any meeting of the Board of Directors. Each Person so selected shall serve the unexpired portion of the term.

**B. Meetings.**

**3.8. Organizational Meetings.** The first meeting of the members of the Board of Directors elected by Owners shall be held within 10 days following each annual meeting of the membership at such time and place as shall be fixed by the Board.

**3.9. Regular Meetings.** Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a Majority of the directors. After the Board of Directors is elected by Owners, at least 4 such meetings shall be held during each fiscal year with at least one per quarter. Notice of the regular schedule shall constitute sufficient notice of such meetings.

**3.10. Special Meetings.** Special meetings of the Board of Directors shall be held when requested by the President or by any two directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by one of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, either directly to the director or to a Person at the director's home or office who would reasonably be expected to communicate such notice promptly to the director; (d) by email; or (e) by commercial delivery service to such director's home or office. All such notices shall be given or sent to the director's address or telephone number as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least 4 days before the time set for the meeting. Notices given by personal delivery, telephone, or electronically, either by confirmed email or facsimile, shall be given at least 48 hours before the time set for the meeting.

**3.11. Waiver of Notice.** The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if (a) a quorum is present, and (b) either before or after the meeting, each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

**3.12. Quorum of Board of Directors.** At all meetings of the Board of Directors, a Majority of the directors shall constitute a quorum for the transaction of business, and the votes of a Majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a Majority of the required quorum for that meeting. If any meeting cannot be held because a quorum is not present, a Majority of the directors who are present at such meeting may adjourn the meeting to a time not less than 5 nor more than 30 days from the time that the original meeting was called. At such adjourned meeting at which a quorum is present,

any business which might have been transacted at the meeting originally called may be transacted without further notice.

**3.13. Compensation.** No director shall receive any compensation from the Association for acting as such unless approved by a Majority of the Total Association Vote. However, any director may be reimbursed for his or her actual expenses incurred in the performance of his or her duties.

**3.14. Open Meetings.** All meetings of the Board shall be open to all members, but members other than directors may not participate in any discussion or deliberation unless expressly so authorized by the Board.

**3.15. Executive Session.** The Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

**3.16. Action without a Formal Meeting.** Any action to be taken at a meeting of the directors, or any action that may be taken at a meeting of the directors, may be taken without a meeting if a consent, in writing, setting forth the action so taken shall be signed by a Majority of the directors and delivered to the Association for filing in the permanent records of the Association.

**3.17. Telephonic Participation.** One or more directors may participate in and vote during any regular or special meeting of the Board by telephone conference call or similar communication equipment by means of which all directors participating in the meeting can hear each other at the same time, and those directors so participating shall be present at such meeting. Any such meeting at which a quorum participates shall constitute a regular meeting of the Board.

**C. Powers and Duties.**

**3.18. Powers.** The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not directed to be done and exercised exclusively by the members under the terms of the Declaration, the Articles of Incorporation of the Association, or these Bylaws. In addition to the duties imposed by these Bylaws or by any resolution of the Association that may hereafter be adopted, the Board of Directors shall have the power to and be responsible for the following, in way of explanation, but not limitation:

(a) preparing and adopting an annual budget in which there shall be established the contribution of each Owner to the common expenses;

(b) making assessments to defray the common expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the assessments;

(c) providing for the operation, care, upkeep and maintenance of all areas which are the maintenance responsibility of the Association;

(d) designating, hiring and dismissing the personnel necessary for the operation of the Association and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies and material to be used by such personnel in the performance of their duties;

(e) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association;

(f) making and amending use restrictions and rules and regulations;

(g) opening bank accounts on behalf of the Association and designating the signatories required;

(h) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules and regulations adopted by it, and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;

(i) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

(j) paying the cost of all services rendered to the Association or its members which are not directly chargeable to Owners;

(k) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, and specifying the maintenance and repair expenses and any other expenses incurred;

(l) contracting with any Person for the performance of various duties and functions;  
and

(m) any and all other duties and responsibilities identified in the Declaration.

The Board shall have the power to enter into common management agreements with trusts, condominiums or other associations. Any and all functions of the Association shall be fully transferable by the Board, in whole or in part, to any other entity.

#### **Section 4** **Officers**

**4.1. Officers.** The officers of the Association shall be a President, Secretary and Treasurer and, if the Board of Directors so chooses, one or more Vice Presidents. Any two or more offices may be held by the same Person, excepting the offices of President and Secretary.

The President and Treasurer shall be elected from among the members of the Board of Directors. This Section shall not apply to officers appointed by the Declarant.

**4.2. Election, Term of Office and Vacancies.** Except during the period in which Declarant has the right to appoint the officers of the Association under Section 3.2 of these Bylaws, the officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the members. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

**4.3. Removal.** Any officer may be removed by the Board of Directors whenever, in its judgment, the best interests of the Association will be served thereby.

**4.4. President.** The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board of Directors. The President shall have all the general powers and duties which are incident to the office of the president of a corporation organized under the Georgia Nonprofit Corporation Code.

**4.5. Vice President.** If a Vice President is elected, the Vice President shall act in the President's absence and shall have all powers, duties and responsibilities provided for the President when so acting.

**4.6. Secretary.** The Secretary shall keep the minutes of all meetings of the Association and of the Board of Directors and shall have charge of such books and papers as the Board of Directors may direct and shall, in general, perform all duties incident to the office of the secretary of a corporation organized in accordance with Georgia law.

**4.7. Treasurer.** The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, for preparing all required financial statements and tax returns, and for the deposit of all monies and other valuable effects in the name of the Association or the managing agent in such depositories as may from time to time be designated by the Board of Directors. If no Vice President has been elected, the Treasurer shall act in the President's absence and shall have all powers, duties and responsibilities provided for the President when so acting.

**4.8. Resignation.** Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

## **Section 5** **Committees**

Committees to perform such tasks and to serve for such periods as may be designated by the Board are hereby authorized. Each committee shall be composed and shall operate in

accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors.

**Section 6**  
**Miscellaneous**

**6.1. Fiscal Year.** The fiscal year of the Association shall be determined by resolution of the Board. In the absence of such a resolution, the fiscal year shall be the calendar year.

**6.2. Parliamentary Rules.** Roberts Rules of Order (current edition) shall govern the conduct of all Association proceedings when not in conflict with Georgia law, the Articles of Incorporation of the Association, the Declaration, these Bylaws, or a ruling made by the Person presiding over the proceeding.

**6.3. Conflicts.** If there are conflicts or inconsistencies between the provisions of Georgia law, the Articles of Incorporation of the Association, the Declaration, and these Bylaws, the provisions of Georgia law, the Declaration, the Articles of Incorporation of the Association, and the Bylaws (in that order) shall prevail.

**6.4. Amendment.** The provisions of the Declaration applicable to amendment of that instrument shall apply to any amendment of these Bylaws.

**6.5. Electronic Records, Signatures and Documents.** To the extent permitted by Georgia law, the Declaration and these Bylaws, the Association and its members, officers, directors, Owners and Occupants may perform any obligation or exercise any right by use of any technological means providing sufficient security, reliability, identification and verifiability, which technological means have been approved by the Board of Directors in its sole discretion.

Deed Book 54813 Pg 337  
Cathelene Robinson  
Clerk of Superior Court  
Fulton County, Georgia