

Upon recording return to:

David N. Dorough, Jr.  
Dorough & Dorough, LLC  
Attorneys at Law  
160 Claremont Avenue, Suite 650  
Decatur, Georgia 30030  
(404) 687-9977

**DECLARATION OF PROTECTIVE COVENANTS**

**FOR**

**THE ENCLAVE ON COLLIER**

DECLARATION OF PROTECTIVE COVENANTS

FOR

THE ENCLAVE ON COLLIER

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## DECLARATION OF PROTECTIVE COVENANTS

FOR

### THE ENCLAVE ON COLLIER

THIS DECLARATION OF PROTECTIVE COVENANTS FOR THE ENCLAVE ON COLLIER ("Declaration") is made on the date hereinafter set forth by **JWC COLLIER VALE, LLC**, a Georgia limited liability company (hereinafter sometimes called "Declarant").

#### Background Statement

Declarant is the owner of the real property described in Exhibit "A" of this Declaration; and

Declarant desires to subject the real property described in Exhibit "A" 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;

NOW, THEREFORE, Declarant hereby declares that the real property described in Exhibit "A," attached hereto and by this reference incorporated herein, including the structures and 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.

#### **Article 1** **Definitions**

The following words, when used in this Declaration or in any amendment thereof (unless the context shall prohibit), shall have the following meanings:

**1.1. "Apartment Owner"** means Collier Property Partners, LLC, a Delaware limited liability company and its successors, successors-in-title and assigns.

**1.2. "Association"** shall mean and refer to The Enclave on Collier Neighborhood Association, Inc., a nonprofit Georgia corporation, its successors and assigns.

1.3. "**Board of Directors**" or "**Board**" 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.

1.4. "**Bylaws**" shall refer to the Bylaws of The Enclave on Collier Neighborhood Association, Inc., attached to this Declaration as Exhibit "C" and incorporated herein by this reference.

1.5. "**Common Property**" 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.

1.6. "**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.

1.7. "**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.

1.8. "**Declarant**" shall mean and refer to **JWC COLLIER VALE, LLC**, a Georgia limited liability company, and its successors-in-title and assigns, taking title to any portion of the property described in Exhibit "A" or Exhibit "B" hereof for the purpose of development and/or sale and designated as Declarant in a recorded instrument by the then holder of the rights of Declarant hereunder. Any or all of the rights of Declarant set forth in this Declaration, the Articles of Incorporation or the Bylaws may be transferred or assigned in whole or in part to other Persons, provided that the transfer or assignment shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration, the Articles of Incorporation or the Bylaws. No transfer or assignment of the rights of Declarant provided for herein shall be effective unless it is in a written instrument signed by Declarant and recorded in the public real estate records of Fulton County, Georgia.

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

**1.10. "Easement Agreement"** means that certain Amended and Restated Easements, Covenants, and Restrictions Agreement by and between Collier Property Partners, LLC and FB Georgian Hills, LLC, recorded October 29, 2012 at Deed Book 51821, Page 327, *et seq.*, Fulton County, Georgia land records, which document establishes and creates certain easements benefitting and burdening the property described therein.

**1.11. "Exclusive Common Property"** means a portion of the Community whether owned by Declarant or conveyed to the Association as Common Property, reserved for the exclusive benefit and use of a particular Townhome Unit or Detached Lot as provided in Section 5.7 hereof.

**1.12. "Georgia Power Company Easement"** means that certain one hundred foot (100') Georgia Power Company Easement, as identified on the recorded subdivision plat(s) for the Community, which easement was created pursuant to that certain Transmission Line Agreement, recorded November 14, 1912 at Deed Book 353, Page 371, Fulton County, Georgia land records; as affected by that that certain Encroachment Agreement for Easement, recorded October 15, 2012 at Deed Book 51768, Page 646, *et seq.*, aforesaid records; and as further modified or affected by any document which may be hereafter recorded.

**1.13. "Lot"** shall mean any plot of land or real property within the Community, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single dwelling site as shown on any plats and/or plans for the Community, or amendments or supplements thereto, recorded in the Fulton County, Georgia land records. A Lot includes a Detached Lot or a Townhome Unit as hereinafter defined, all as shown on the recorded subdivision plat(s) for the Community.

The ownership of each Lot shall also include the exclusive right to use and possession of any and all portions of the heating and air conditioning units which are appurtenant to and serve each Lot (including, but not limited to, compressors, conduits, wires and pipes) and any driveway, walkway, porch, deck, balcony, courtyard, patio, steps, wall, roof, foundation, courtyard, sunroom or any similar appurtenance as may be attached to a Lot when such Lot is initially constructed.

The ownership of each Lot shall include, and there shall automatically pass with the title to each Lot as an appurtenance thereto, whether or not separately described, membership in the Association and all of the rights and interest of an Owner in the Common Property, including, without limitation, the Exclusive Common Property, as herein provided. The Association acknowledges and agrees that certain appurtenances described above as initially constructed may encroach upon the Common Property, but that such encroachments are not a detriment, but rather a benefit, to the Community. Consequently, such appurtenances shall be considered a part of the Lot, maintained as provided in the Declaration, and allowed to encroach upon the Common Property; provided, however, no such appurtenant structure may be altered, changed or enlarged except in accordance with Section 6.9, and any other pertinent provisions, of the Declaration.

1.14. "**Majority**" means those eligible votes, Owners or other group as the context may indicate totaling more than fifty percent (50%) of the total eligible number.

1.15. "**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.

1.16. "**Mortgagee**" shall mean the holder of a Mortgage.

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

1.18. "**Owner**" shall mean and refer to the record owner, whether one or more Persons, of the fee simple title to any Lot located within the Community, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation.

1.19. "**Person**" means any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, or other legal entity.

1.20. "**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.

1.21. "**Total Association Vote**" means all of the votes attributable to members of the Association (including the votes of Declarant) and the consent of Declarant (so long as Declarant owns any property for development and/or sale in the Community or has the right unilaterally to annex additional property to the Community).

1.22. "**Townhome Unit**" shall mean any plot of land within the Community, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single dwelling which will be attached by one or more party walls to another residential dwelling. Where a Townhome Unit is attached by a party wall to one or more Townhome Units, the boundary between such Townhome Units shall be a line running along the center of the party wall separating the Townhome Units.

## Article 2

### Property Subject to this Declaration

2.1. **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.



**2.2. Other Property.** Only the real property described in Section 2.1 hereof 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 the real property described on Exhibit "B" to this Declaration, as provided in Section 9.1 hereof.

**Article 3**  
**Association Membership and Voting Rights**

**3.1. Membership.** Every Person who is the record owner of a fee (including an undivided fee) interest in any Lot 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 Lot. In the event of multiple Owners of a Lot, 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 Lot. 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 Lot owned.

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

**Article 4**  
**Assessments**

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

**4.2. Creation of the Lien and Personal Obligation for Assessments.** Each Owner of a Lot, 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: (a) annual assessments or charges; (b) special assessments, such assessments to be established and collected as hereinafter provided; (c) specific assessments against any particular Lot 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; and (d) Townhome Unit assessments as set forth in Section 4.6 hereof.

All assessments, together with late charges (in an amount not to exceed the greater of Ten and No/100 Dollars (\$10.00) or ten percent (10%) of the assessment or installment not paid when

due), interest on the principal amount due (at a rate not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum), costs of collection and reasonable attorney's fees actually incurred, shall be a charge on the land and a continuing lien upon the Lot against which each assessment is made. 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 Lot 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 Lot, and each grantee of an Owner shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of the grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings or deed in lieu of foreclosure. 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 attorneys' fees shall not be construed in accordance with the provisions of O.C.G.A. Section 13-1-11(a)(2).

Assessments shall be paid at a uniform rate for all similarly situated Lots in such manner and on such dates as may be fixed by the Board of Directors, which may include, without limitation, acceleration upon ten (10) days written notice, of assessments for delinquents. Unless otherwise provided by the Board, assessments shall be paid in annual installments.

The monthly costs of operating the Association may fluctuate dramatically during each budget year. Therefore, the Board is not required to prorate the assessment obligation of any Owner who has not lived in the Community for a full year. For example, if the bulk of the costs of operating the Association are likely to be incurred in the summer months, any Owner moving into the Community after the beginning of the budget year but prior to the summer months may be required to pay full assessments.

**4.3. Computation of Budget; Annual Assessment.** 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. Costs incurred pursuant to the Easement Agreement shall be included as a line item in the Association's budget. The Board shall cause the budget and the annual assessment to be levied against each Lot for the year (or portion thereof in the case of the initial budget) to be delivered to each member at least thirty (30) days prior to the due date of such annual assessment (or the first installment thereof). The annual assessment shall become effective unless disapproved at a meeting by a Majority of the Total Association Vote and the Declarant. Notwithstanding the foregoing, however, in the event the membership and Declarant disapprove the proposed budget or 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.

**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 unbudgeted or unanticipated expenses or expenses in excess of those budgeted. So long as the

total amount of special assessments allocated to each Lot does not exceed Three Hundred and No/100 Dollars (\$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 7.3 hereof, any special assessment which would cause the total amount of special assessments allocated to any Lot to exceed this limitation shall be effective only if approved by a Majority of the Total Association Vote and the Declarant. 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.** The Board shall have the power to specifically assess 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 of Directors 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. By way of explanation and not limitation, the following shall constitute specific assessments: (a) fines levied pursuant to Section 12.1 of this Declaration; (b) the capital contribution set forth in Section 4.11 hereof; and (c) the costs of maintenance performed by the Association which an Owner is responsible for under this Declaration. The Board may also specifically assess Lots for the following Association expenses:

(a) Expenses of the Association which benefit less than all of the Lots may be specifically assessed equitably among all of the Lots which are benefited according to the benefit received.

(b) Expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be specifically assessed equitably among all Lots according to the benefit received.

(c) Expenses incurred by the Association which are attributable to or the result of the conduct of a particular Owner or the Occupants, guests, tenants, invitees or licensees of such Owner may be specifically assessed against the Lot of said Owner.

**4.6. Townhome Unit Assessments.** The Board shall have a right to levy assessments against the Townhome Units for those costs and expenses which exclusively benefit the Townhome Units as more particularly set forth in Section 8.3 hereof.

**4.7. Lien for Assessments.** All sums assessed against any Lot 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 Lot 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 Lot, except for: (a) liens for ad valorem taxes; (b) liens for all sums unpaid on a first Mortgage; or (c) 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.

All other Persons acquiring liens or encumbrances on any Lot 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.

**4.8. Effect of Nonpayment of Assessments; Remedies of the Association.** All sums (including assessments or installments thereof) assessed against any Lot pursuant to this Declaration which are not paid when due shall be delinquent. Any such sums delinquent for a period of more than ten (10) days shall incur a late charge (in an amount not to exceed the greater of Ten and No/100 Dollars (\$10.00) or ten percent (10%) of the assessment or installment not paid when due) and 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 eighteen percent (18%) per annum. The Association may cause a notice of delinquency to be given to any member who has not paid within ten (10) days following the due date. If any such sums are not paid within thirty (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.

If any sum assessed against any Lot pursuant to this Declaration remains unpaid after sixty (60) days from the due date, the Association may, as the Board shall determine, institute suit 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 the Owner, 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 Article 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 Lot 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 Property and the right to receive such services and other benefits as may be provided by the Association, if any, including, without limitation, water service as provided in Section 4.9 hereof. 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 Lot in favor of the Association.

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 Lot or nonuse of the Common Property. 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.

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 attorneys' fees shall not be construed in accordance with the provisions of O.C.G.A. Section 13-1-11(a)(2).

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

**4.9. Suspension of Utilities and Services Provided by the Association.** In the event any assessment, fine or other charge, or any portion or installment thereof, is delinquent for ninety (90) days or more, in addition to all other rights provided in this Declaration, the Association shall have the right, upon ten (10) days written notice, subject to the suspension standards and notice requirements imposed on the institutional providers providing such services to the Community, if any, to suspend any utility or service, the cost of which is paid for by the Association as a common expense, which shall include, without limitation, water service to a Lot, until such time as the delinquent assessments and all costs permitted under this Section, including, without limitation, reasonable attorney's fees actually incurred and any reasonable utility provider charges or other reasonable costs incurred in suspending and/or restoring such services, are paid in full. Said utility services shall not be required to be restored until such delinquent assessments and costs, including, without limitation, any reasonable utility provider charges or other reasonable costs incurred in suspending and/or restoring such services, are paid in full. All Association expenses for terminating and/or restoring any services pursuant to this Section, including reasonable attorneys' fees actually incurred, shall be a specific assessment and shall be collected as provided herein for the collection of assessments.

The notice requirement of this Section shall be deemed complied with if the notice is sent by certified mail, return receipt requested, to the address of the Lot and to any other address the Owner of the Lot has designated in writing to the Association. Enforcement under this Section is not dependent upon or related to other restrictions and/or other actions, except as provided herein.

**4.10. Date of Commencement of Assessments/Assessment Obligation of Declarant.**

(a) The assessments provided for herein shall commence as to all Lots subject to assessment hereunder as of the first day of the calendar year in which the first Lot is conveyed by 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 of Directors may provide. All assessments shall be rounded up to the nearest dollar and payable as such.

(b) After the commencement of assessment payments as to any Lot, Declarant and its respective successors and assigns, covenant and agree to pay the full amount of the assessments provided herein for each Lot owned by Declarant or its affiliates containing an occupied residence; provided, however, each Lot 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 Lot 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 Lot 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 service(s) performed and material(s) furnished, and the Association shall acquire bids for performing like services and furnishing like materials from three (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.

#### **4.11. Capitalization of Association.**

(a) Upon acquisition of record title to a Lot by the first Owner thereof other than Declarant or its affiliates, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount up to one hundred percent (100%) of the then current annual assessment per Lot for that year, with the exact amount to be determined from time to time by the Board in its sole discretion.

(b) Upon acquisition of record title to a Lot by the second and subsequent Owners thereof other than Declarant or its affiliates, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount up to one hundred percent (100%) of the then current annual assessment per Lot for that year, with the exact amount to be determined from time to time by the Board in its sole discretion.

This contribution(s) set forth in subsection (a) and (b) above shall constitute specific assessments against the Lot, and shall be in addition to, not in lieu of, any other assessments

levied on the Lot 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. This contribution shall be collected at the closing of the Lot, or if not collected at closing, shall be paid immediately upon demand by the Association, and 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. This contribution shall not apply to the holder of any first Mortgage on a Lot who becomes the Owner of a Lot through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage, but shall apply to the Owner acquiring title to the Lot from the foreclosing Mortgagee.

**4.12. 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, specific and Townhome Unit assessments collected by the Association in any fiscal year, and such advances shall be evidenced by promissory notes from the Association in favor of the Declarant; or (b) cause the Association to borrow such amount from a commercial lending institution at the then-prevailing rates for such a loan in the local area of the Community. The Declarant in its sole discretion may guarantee repayment of such loan, if required by the lending institution, but no Mortgage secured by the Common Property or any of the improvements maintained by the Association shall be given in connection with such loan.

**4.13. Estoppel Letter.** Any Owner, Mortgagee, or a Person having executed a contract for the purchase of a Lot, or a lender considering a loan to be secured by a Lot, 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 Lot. 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 five (5) business days after receiving a written request therefor, certify to the amount of any unpaid assessments constituting a lien on a specified Lot. The Association may charge a reasonable fee as may be permitted by law as a prerequisite to the issuance of such statement. A certification letter signed by an officer of the Association or the Association's managing agent, if any, as to the amount of assessments due with respect to a Lot shall be binding upon the Association. It is the intent of this provision to comply with O.C.G.A. Section 44-14-15(c), as amended.

**4.14. Use of Apartment Amenities.** Each Owner shall have the right to use and enjoy the cyber cafe, fitness center and swimming pool (collectively, the "Apartment Amenities") located in the adjacent apartment complex currently known as "The Reserve at Collier Hills" upon the purchase of an annual membership from the Apartment Owner in accordance with the terms and conditions set forth in the Easement Agreement. Any fees paid by an Owner to use and enjoy the Apartment Amenities shall be in addition to the annual, special, specific and Townhome Unit assessments paid to the Association in accordance with the Declaration. The

Association shall have no responsibility or liability with respect to the payment or nonpayment for the use of the Apartment Amenities and the remedy of the Apartment Owner for nonpayment of any membership fee shall be as set forth in the Easement Agreement.

**Article 5**  
**Maintenance; Common Property**

**5.1. Association's Maintenance Responsibility.** The Association shall maintain and keep in good repair the Common Property and all maintenance, repair and replacement, subject to any insurance then in effect, of all landscaping, structures, and improvements located thereon; provided, however, each Owner of a Detached Lot shall be responsible for maintaining a portion of the Exclusive Common Property appurtenant to such Detached Lot as provided herein.

The Association shall maintain, whether or not the same constitutes Common Property, the following: (a) all entry features for the Community, including any appurtenant landscaping and any irrigation system and/or lighting system serving said entry features, regardless of whether the same are located on Common Property or public right-of-way; provided, however, the Apartment Owner shall be responsible for the entrance sign located at the intersection of Collier Hills Road and Collier Hills Drive in accordance with the Easement Agreement; (b) all street signs originally installed by Declarant or its affiliates or the Association; (c) all storm water detention and retention areas and any storm water drainage facilities serving the Community and any gate, fence or other enclosure surrounding any storm water drainage detention/retention areas and storm water drainage facilities, to the extent such areas are not maintained by the Apartment Owner pursuant to the Easement Agreement or on an ongoing basis by a governmental authority or third party; provided, however, each Owner of a Lot, and not the Association, shall be responsible for all storm water drainage facilities and pipes, wires and conduits which exclusively serve such Lot; (d) certain portions of the Townhome Units as provided in Article 8 hereof; (e) all Community streets, drives, alleys and street medians and street islands and any landscaping associated therewith, if and to the extent the same are not maintained by the Apartment Owner in accordance with the Easement Agreement or on an ongoing basis by a governmental authority or third party; (f) all lawn and landscaping in the Community as provided in Section 5.4 hereof; (g) the centralized mailbox area and the mailboxes located thereon; (h) all pipes, wires and conduits which serve more than one (1) Lot or a Lot and Common Property; and (i) all Community green space and open space, including, without limitation, the dog park located within the Community.

The Association shall have the right, but not the obligation, to maintain property it does not own where the Board has determined that such maintenance would benefit the Owners. In addition to the foregoing, the Board shall have the right, without a vote of the members, but with the consent of the Declarant, to enter easements and/or cost sharing agreements where the Board has determined that such action would benefit all Owners.

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



Any maintenance or repair performed on or to the Common Property by an Owner or Occupant which is the responsibility of the Association hereunder (including, without limitation, landscaping of Common Property) shall be performed at the sole expense of such Owner or Occupant, and the Owner or Occupant shall not be entitled to reimbursement from the Association, even if the Association accepts the maintenance or repair.

**5.2. Owner's Maintenance Responsibility.** Except for maintenance performed on or to a Lot by the Association pursuant to Section 5.4 and Article 8 hereof, Owners of Detached Lots and Townhome Units shall be responsible for maintaining all portions of the Lot which shall include, but not be limited to, the following: (a) all pipes, lines, ducts, conduits or other apparatus which serve only the Lot, regardless of whether the same are located on such Lot or Common Property (including gas, electricity, water, sewer, heat and air conditioning, and cable television lines, pipes, ducts, conduits and any other apparatus serving only the Lot); (b) all driveways and walkways serving the Lot, regardless of whether such driveway or walkway is located on the Lot or Common Property; (c) all decks (including support structures and joists), patios, balconies and courtyards and any painting and/or staining thereof; (d) those portions of the Exclusive Common Property as provided in Section 5.4 hereof.

(a) Detached Lots. In addition to the foregoing, the Owners of Detached Lots shall be responsible for all maintenance, repair and replacement to the residential dwelling located on such Detached Lot, including, periodic painting and/or pressure washing of such residential dwelling. Any maintenance which involves an exterior change, including, without limitation, repainting the exterior improvements located on Detached Lots in a different color, shall require prior approval pursuant to and in accordance with Section 6.9 of this Declaration.

(b) Townhome Units. Exterior maintenance to the Townhome Units shall be as more specifically set forth in Article 8 hereof.

Each Owner shall be obligated: (a) to perform his or her maintenance responsibility in such manner so as not to unreasonably disturb other Persons in or on other Lots; (b) to promptly report to the Association or its agent any defect or need for repairs for which the Association is responsible; and (c) not to make any alterations in the portions of the Lot which are to be maintained by the Association, if any, remove any portion thereof, make any additions thereto, or do anything with respect to the exterior or interior of such Lot or the structures thereon which would or might increase the Association's maintenance costs or jeopardize or impair the safety or soundness of any Lot or structure located thereon, without first obtaining the written consent of the Board and all Owners and Mortgagees of the Lots affected. Each Owner shall also be obligated not to 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.

**5.3. Failure to Maintain.** If the Board of Directors determines that: (a) 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; or (b) the need for maintenance, repair or replacement, which is the responsibility of the

Association hereunder, 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 the Association may perform the repair, replacement or maintenance and shall, except in an emergency situation, give the Owner written notice of the Association's intent to provide such 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 to be performed. Except in an emergency situation, the Owner shall have ten (10) days from the date of the notice within which to complete such maintenance, repair or replacement, or, in the event that such maintenance, repair or replacement is not capable of completion within such time period, to commence such work within such ten (10) day period and diligently pursue completion within a reasonable period of time. 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 Lot at such Owner's sole cost and expense, and all costs shall be added to and become a part of the assessment to which such Owner is subject, shall become and be a lien against the Lot, and shall be collected as provided herein for the collection of assessments. This provisions shall not apply to any Lot(s) owned by the Declarant unless improved with a dwelling and occupied as a residence.

#### **5.4. Landscaping and Lawn Maintenance.**

(a) By the Association. As provided in Section 5.1 above, the Association shall maintain and keep in good repair the lawn and landscaping improvements located on the exterior portions of the Community, which shall include without limitation, the following: (a) lawn mowing on a regular basis; (b) tree and shrub pruning; and (c) watering landscaped areas. Except for lawn and landscaping to the front yard of a Detached Lot as provided in Section 5.7 hereof, the Association shall not be responsible for the maintenance of any lawn or other landscaping on any portion of the Exclusive Common Property.

The foregoing maintenance by the Association shall include mowing that certain eighteen foot (18') GA. Power Co. Access Route, located within the Georgia Power Company Easement, as the same is generally described on the recorded subdivision plat(s) for the Community.

Any common irrigation system installed by the Declarant or the Association, as the case may be, shall be Common Property, operated, maintained, repaired and replaced by the Association.

The Board of Directors in its sole discretion may leave portions of the Community as undisturbed natural areas and may change the landscaping in the Community at any time and from time to time or may, with the consent of the Declarant promulgate rules setting forth the extent of maintenance to be performed. The Board of Directors may promulgate rules setting forth the rights of Owners with respect to adding or modifying landscaping improvements, including, for example allowing seasonal flowering plants in certain areas of the Community at the expense of the Owner. Landscaping improvements installed by the Owner in accordance with the provisions of this Declaration shall be maintained by the Owner in a manner consistent with the Community-Wide Standard. Any landscaping improvements originally installed by an

Owner which are not properly maintained, including, but not limited to, damaged, diseased or dead plants, shrubs and trees may, at the sole discretion of the Board of Directors, be removed from the Community. The costs associated with removing any damaged, diseased or dead plants, shrubs and trees originally installed by an Owner in the Community, may be assessed against the Owner and the Lot as a specific assessment.

(b) **Exclusive Common Property.** Owners of Detached Lots and Townhome Units shall maintain the Exclusive Common Property appurtenant to each Detached Lot and Townhome Unit, respectively; with the exception of the Front Yard Exclusive Easement Area for the Detached Lots, as set forth in 5.8 hereof, which will be maintained the Association. Maintenance of Exclusive Common Property by an Owner shall include the following: (i) lawn mowing on a regular basis; (ii) tree and shrub pruning and weeding, as applicable; (iii) shrub fertilization; (iv) monitoring plants, shrubs and lawns for insecticide and disease; and (v) such other landscaping activity as determined by the Board to be in the best interest of the Community.

**5.5. Limitation of Liability.** Owners, Occupants and their guests shall use the Common Property and all portions of the Community not contained within a Lot at their own risk and shall assume sole responsibility for their personal belongings used or stored thereon. All Owners and Occupants shall have an affirmative duty and responsibility to inspect the Common Property 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: (a) personal injury to any person occurring on the Common Property; (b) loss or damage to personal belongings used or stored on the Common Property or on any other portion of the Community; or (c) loss or damage, by theft or otherwise, of any other property of an Owner or Occupant.

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: (a) caused by the elements or by an Owner or any other Person; (b) resulting from any rain or other surface water which may leak or flow from any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association; or (c) caused by any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, becoming out of repair.

**5.6. Master Water Meter.** The Community may be served by a master water meter. In such event, the Association shall be responsible for the administration of expenses associated with the master water meter located within the Community and shall pay all usage charges for water supplied to the Community through the master water meter. Each Lot shall be served by a sub-meter which allows the Association to determine the approximate water usage attributable to a particular Lot and the Board of Directors may specifically assess each Lot for its share of water usage as a specific assessment in accordance with Section 4.5 hereof. The Association may contract with an independent service provider to read the sub-meters in order to measure the

water consumption provided to each Lot and to directly bill, receive and process payment for water consumed by each Lot.

**5.7. Exclusive Common Property.** As provided in Section 1.11 hereof, a portion of the Common Property shall be reserved for the exclusive use of the Owners of the Townhome Units and the Detached Lots as provided herein. Unless otherwise provided in a recorded document applicable to a specific Lot in the Community, the boundaries of the Exclusive Common Property areas for the Detached Lots and the Townhome Units shall be as set forth in subsection (a) below.

(a) Boundaries of Exclusive Common Property.

(i) Townhome Units. The boundary of the Exclusive Common Property reserved for the benefit of the Owners of Townhome Units shall be that portion of the Common Property which has been enclosed by a fence and, to the extent feasible, extends not more than thirty (30) feet from the rear of such Townhome Unit, lying between two parallel lines extending from the rearmost corner(s) of said Townhome Unit.

(ii) Detached Lots. The Detached Lots shall have three Exclusive Common Property areas, as more particularly described below.

(A) Front Yard Exclusive Common Property. The boundary of the Front Yard Exclusive Common Property shall be that portion of the Common Property extending from the front most corners of the residential dwelling located on the Detached Lot, to the corner of the residential dwelling located on the adjacent Detached Lot on the side containing utility meters and extending to the back of the curb.

(B) Side Yard Exclusive Common Property. The boundary of the Side Yard Exclusive Common Property shall be that portion of the Common Property extending from the rear and front corners of the side of the residential dwelling located on the Detached Lot which contains the utility meters to front and rear corners of the residential dwelling located on the adjacent Detached Lot.

(C) Rear Yard Exclusive Common Property. The boundary of the Rear Yard Exclusive Common Property shall be that portion of the Common Property extending from the rear most corners of the residential dwelling to the corner of the residential dwelling located on the adjacent Detached Lot on the side containing utility meters and, extending to the centerline of the Georgia Power Company Easement.

(b) Restriction Regarding Use. No Owner, Occupant, or any other Person may make any exterior change, alteration, or construction on or to any portion of the Exclusive Common Property appurtenant to a Lot, including, without limitation, the painting and installation or placement of any fence, deck, patio, landscaping, object, sign, equipment, light, storm door or window, artificial vegetation, exterior sculpture, fountain, flag, or thing, without prior written approval in accordance with the provisions of Section 6.9 hereof or any applicable Architectural

Guidelines and subject to the rights of Georgia Power Company as to any portion of the Exclusive Common Property lying within the Georgia Power Easement set forth below.

(c) Easement for Exclusive Common Property. Declarant, as the owner of all of the property in the Community, hereby reserves for the benefit of the Townhome Units and the Detached Lots an easement of access, ingress, egress, use and enjoyment across that portion of the Common Property designated as Exclusive Common Property as provided herein. Such Exclusive Common Property may be used and enjoyed exclusively by the Owner of such benefited Townhome Unit or Detached Lot, as the case may be, in any manner and for any purpose permitted by this Declaration, including such purposes as landscaping and general recreation; provided, however, each Owner shall comply with the use restrictions contained herein and rules adopted by the Board of Directors and obtain prior written approval in accordance with Section 6.9 hereof prior to installing any structures or improvements, including landscaping improvements except for those improvements which may be installed without approval as provided herein or in accordance with the Architectural Guidelines. The easement granted herein shall be appurtenant to and run with title to such benefited Townhome Unit or Detached Lot, respectively, for the benefit of the Owner of said Townhome Unit or Detached Lot, as applicable, but shall not be sold, mortgaged, leased or otherwise granted or conveyed separate and apart from such benefited Townhome Unit or Detached Lot.

(d) Rights Reserved For Georgia Power Company. By taking title to a Detached Lot in the Community, Owners and Occupants acknowledge and agree that a portion of the Rear Yard Exclusive Common Property is located within the Georgia Power Company Easement and shall be subject to those restrictions and conditions as set forth in Section 6.31 hereof. The easement granted herein shall also be subject to the rights of Georgia Power as set forth in the Georgia Power Company Easement and any documents related thereto or adopted in connection therewith, as further described in Section 6.31 hereof.

**5.8. Conveyance of Property to Association; No Implied Rights.** 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. Such conveyance shall be accepted by the Association, and the property shall thereafter be Common Property to be maintained by the Association for the benefit of all or a part of its members. So long as Declarant owns any property primarily for development and/or sale in the Community or has the right unilaterally to annex additional property to the Declaration, Declarant may, upon written notice to the Association, require the Association to reconvey to Declarant or its designee of all or any portion of the Common Property, 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 Property is: (a) found by Declarant to have been conveyed in error; (b) needed by Declarant to make adjustments in property boundary lines; or (c) reasonably determined by Declarant to be needed due to changes in the overall scheme of development for the Community. 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. 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. 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 Fulton County, Georgia land records.

## **Article 6**

### **Use Restrictions and Rules**

**6.1. General.** This Article, beginning at Section 6.2, 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 12.4 hereof regarding amendment of this Declaration. The Board of Directors may, from time to time, without consent of the members, promulgate, modify or delete reasonable rules and regulations applicable to the Lots and the Common Property, including Exclusive Common Property. 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 the Declarant.

**6.2. Use of Lots.** All Lots 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, from or upon any Lot 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 Lot may conduct such ancillary business activities within the residence located on such Lot so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from the exterior of the residence; (b) the business activity does not involve regular, frequent or conspicuous visitation of the Lot by employees, clients, customers, suppliers or other business invitees for business purposes; (c) the business activity conforms to all zoning requirements for the Community; (d) the business activity does not increase traffic in the Community (other than by deliveries by couriers, express mail carriers, parcel delivery services and other such similar delivery services); (e) 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; (f) 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 (g) the business activity does not result in a materially greater use of common facilities or Association services. 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: (a) such activity is engaged in full- or part-time; (b) such activity is intended to or does generate a profit; or (c) a license is required therefor. 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 on Lots in the Community. Leasing of a Lot shall not be considered a trade, business or business activity. Lots may be leased for residential purposes as provided in Section 6.31 hereof.

**6.3. Signs.** 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 for the following: (a) one (1) professional security sign consistent with the Community-Wide Standard not to exceed four inches (4") by four inches (4") in size (and in the case of a Townhome Unit the Board or its designee may require that the sign be displayed only from within the dwelling structure); (b) such signs as may be required by legal proceedings; (c) reasonable and appropriate signs erected by the Board, Declarant and their respective affiliates, which may include signs related to the development, construction, marketing or sales of Lots in the Community; and (d) in connection with a bona-fide offer to sell or lease a Lot, one (1) professionally lettered "For Sale" or "For Rent" sign consistent with the Community-Wide Standard may be displayed on the Lot (or, in the case of a Townhome Unit, displayed only from within the dwelling structure), but only if: (i) the sign has a maximum area of four (4) square feet and, except for signs displayed from within a dwelling structure, a maximum height of four (4) feet above ground level; and (ii) 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 or for rent and the name and telephone number of the person to contact for additional information. Any other type of "For Sale" or "For Rent" sign shall not be permitted in the Community unless otherwise approved by the Board as provided in this Section 6.9. The Board of Directors 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. The Board may impose a reasonable fine against any Owner or Occupant per day for any violation 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 Lot and may be collected in the same manner as provided herein for the collection of assessments.

**6.4 Vehicles.** The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, golf carts, trucks,

campers, buses, vans, automobiles and limousines. Vehicles shall not be parked on any street within the Community. Vehicles shall not be parked on the Common Property (except passenger non-commercial automobiles parked in designated parking areas or parking spaces while the users thereof are using the Common Property) or on any other portion of the Community other than the driveway and the garage. Unless and except to the extent that the Occupants of a Lot shall have more vehicles than the number of garage parking spaces serving their Lot, all vehicles shall be parked within such garage parking spaces. Vehicles may be parked in the driveway, if possible, and additional parking spot(s), if any, serving a Lot only after all of the garage parking spaces serving such Unit have vehicles parked in them. Any vehicle parked on a driveway shall not encroach onto any street, alley, sidewalk or other landscaped or grassy area. All parking shall be subject to such further rules and regulations as the Board may adopt in its sole discretion. 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. 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 on the Community for three (3) consecutive days or longer without being moved and without the prior written permission of the Board. 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 Property; provided, however, without the prior written consent of the Board, no such vehicle shall be authorized to remain in the Community overnight or for any purpose except serving a Lot or the Common Property.

If any vehicle is parked on any portion of the Common Property 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 twenty-four (24) hours the vehicle may be towed. 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 twenty-four (24) hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six (6) months of such notice, the vehicle may be towed in accordance with the notice, without further notice to the Owner or user of the vehicle. If a vehicle is parked on the private Community streets, drives or alleys such that it is blocking another vehicle or access to a Lot, is obstructing the flow of traffic, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed immediately. If a vehicle is towed in accordance with this Section, neither the Association, the Declarant nor their respective directors, officers, employees, representatives or agents shall be liable to any person for any claim of damage or otherwise resulting from the towing activity. Notwithstanding anything to the contrary herein, the Board of Directors may elect to impose fines or use other available sanctions, rather than exercise its authority to tow. 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 and build out of the Community.

**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 Lot even though Occupants are not specifically mentioned. Fines may be levied against Owners or Occupants, subject to applicable notice and hearing provisions contained in the Bylaws. 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 Lot.

**6.6 Animals and Pets.** No animals, livestock or poultry of any kind may be raised, bred, kept or permitted on any Lot, 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 in its sole discretion. No pets shall be kept, bred or maintained for any commercial purpose. No dog runs, runners or exterior pens for household pets shall be erected or maintained on any Lot unless approved in accordance with the provisions of Section 6.9 hereof. Dogs shall at all times when outside of a residential dwelling located on a Lot be kept on a leash or otherwise under the physical control of a responsible person. All Owners must control their pets at all times, whether or not such Owner is present, in a manner that will prevent any pet from: (a) making noise at objectionable sound levels for extended periods of time, whether continuously or intermittently; (b) 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 (c) otherwise constituting a nuisance or inconvenience to the Owner(s) or Occupant(s) of any other Lot; all of the foregoing as determined by the Association in its sole discretion. 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. In the event that 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, including, without limitation, reasonable attorneys' fees actually incurred, shall be a specific assessment against the Lot of such Owner. The Association shall have the right to adopt reasonable rules and regulations governing pets in the Community, including, without limitation, noise controls, lease controls and damage deposits.

**6.7. Nuisance.** It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly or unkempt condition on his or her Lot. No Lot shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or material be kept upon any Lot 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 upon any Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to any Person using any property adjacent to the Lot. Owners and Occupants shall not maintain any plants, animals, 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 Lot unless required by law. The inconvenience complained of shall not be fanciful, or such as would affect only one of fastidious taste, but it shall be such as would affect an ordinary, reasonable person as determined in a particular instance by the Board. Notwithstanding anything to the contrary herein, each Owner and Occupant acknowledges that the Declarant and its respective affiliates, agents and subcontractors may engage in construction activities on one or more Lots in the Community and further agrees that such construction activities shall not be deemed a nuisance as provided herein.

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

**6.9. Architectural Standards.** 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 installed by the Declarant or its affiliates, or as is approved in accordance with this Section, or as is otherwise expressly permitted herein.

(a) **General.** 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, received by, and approved in writing by the Board or its designee. The Board or its designee may promulgate written guidelines for the exercise of this review. The Board or its designee 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 or any Architectural Guideline as defined herein. If the Board or its designee fails to approve or to disapprove plans and specifications within sixty (60) days after such plans and specifications have been received, such plans and specifications will be deemed approved. However, all activities pursuant to plans which have been deemed approved shall be consistent and in accordance with, and may not violate, this Declaration and any Architectural Guidelines. This Section 6.9 shall not apply to any activities of the Declarant or its affiliates. Any member of the Board or its designee or the representatives thereof 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; provided, however, nothing herein shall authorize entry into a single family dwelling located on a Lot without the permission of the Owner thereof. As a condition of approval under this Section, each Owner, on behalf of such Owner and such Owner's successors-in-interest, shall assume all responsibilities for the maintenance, repair, replacement and insurance to and on any change, modification, addition or alteration. In the

discretion of the Board or its designee, 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.

(b) Architectural Guidelines. The Declarant may adopt written architectural and landscaping guidelines ("Architectural Guidelines") and application and review procedures, which may provide for a review fee. The Declarant shall have the sole and full authority to prepare, from time to time at its sole discretion and without notice, the initial Architectural Guidelines, which may be modified, in whole or in part, repealed or expanded by the Declarant at any time and from time to time at its sole discretion. In the event Declarant modifies, expands or repeals all or any portion of the Architectural Guidelines, said new Architectural Guidelines 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 until and unless overruled, canceled or modified by a majority of the Total Association Vote and the Declarant. The Declarant shall make the Architectural Guidelines available to Owners and Occupants who seek to engage in construction upon all or any portion of the Community and such Owners and Occupants shall conduct their operations strictly in accordance therewith and with the provisions of this Section 6.9. All Owners and Occupants of Lots are hereby notified that the use of their Lots 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 Lot 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.

(c) Limitation on Liability. PLANS AND SPECIFICATIONS ARE NOT APPROVED FOR ENGINEERING OR STRUCTURAL DESIGN, QUALITY OF MATERIALS, COMPLIANCE WITH ZONING CONDITIONS, PERMITTING REQUIREMENTS, BUILDING COES OR OTHER LOCAL OR GOVERNMENTAL LAWS AND ORDINANCES GOVERNING CONSTRUCTION IN THE COMMUNITY AND BY APPROVING SUCH PLANS AND SPECIFICATIONS, THE DECLARANT, ITS PARTNERS AND DESIGNEES, THE BOARD, ITS MEMBERS AND THE ASSOCIATION DO NOT ASSUME ANY LIABILITY OR RESPONSIBILITY THEREFOR, NOR FOR ANY DEFECT IN ANY STRUCTURE CONSTRUCTED FROM SUCH PLANS AND SPECIFICATIONS OR FOR ANY VIOLATION OF BUILDING CODES, PERMITTING REQUIREMENTS OR ANY OTHER VIOLATION OF LOCAL LAWS AND ORDINANCES GOVERING CONSTRUCTION IN THE COMMUNITY. DECLARANT AND ITS AFFILIATES, PARTNERS AND DESIGNEES, THE ASSOCIATION, THE BOARD, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, MEMBERS, SHAREHOLDERS, EMPLOYEES AND AGENTS SHALL NOT BE LIABLE IN DAMAGES OR OTHERWISE TO ANYONE SUBMITTING PLANS AND SPECIFICATIONS TO ANY OF THEM FOR APPROVAL, OR TO ANY OWNER OF PROPERTY AFFECTED BY THESE RESTRICTIONS, BY REASON OF 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 AGREE THAT SUCH PERSONS AND OWNERS WILL NOT BRING ANY ACTION OR SUIT AGAINST DECLARANT, ITS AFFILIATES, THE ASSOCIATION, THE BOARD, ITS DESIGNEE, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, MEMBERS, SHAREHOLDERS, EMPLOYEES AND AGENTS, 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.

**6.10. Antennas and Satellite Dishes.** 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 one (1) meter in diameter, shall be placed, allowed or maintained upon any portion of the Community, including any Lot, without the prior written consent of the Board or its designee. DBS and MMDS antennas and satellite dishes one (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 or its designee 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; provided however neither the Board or the Association may restrict the location of a Permitted Antenna if such restriction: (a) imposes unreasonable delay or prevents the use of the antennae; (b) unreasonably increases the cost of installation; or (c) an acceptable quality signal cannot otherwise be obtained. .

**6.11. Gardens, Basketball Goals, Etc.** Grass, ornamental plants and shrubbery (and only the foregoing) may be planted in the Exclusive Common Property. All other planting may be done only with prior written approval of the Board or its designee or in accordance with the guidelines previously established by the Board or its designee. No vegetable garden, hammocks, statuary or recreational equipment may be placed, erected, allowed or maintained within the Community without the prior written consent of the Board or its designee.

**6.12. Tree Removal.** No trees shall be removed without the express prior consent of the Board or its designee, except for: (a) trees removed by the Association, Declarant or its respective affiliates, representatives an agents; and (b) diseased or dead trees. 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 and assess the cost(s) associated therewith as a specific assessment against the Lot of such Owner. The Association and Owners shall also comply with all zoning conditions and local ordinances regarding tree removal. In the event of a

conflict between the provisions of this Section and any zoning conditions or local ordinances, the more restrictive provision shall control.

**6.13. Lighting.** Notwithstanding Section 6.9 above, the following exterior lighting may be installed without obtaining the prior approval of the Board or its designee: (a) seasonal decorative lights during the holiday season subject to reasonable rules and regulations promulgated by the Board; (b) illumination of model homes and entrance features constructed by the Declarant or its affiliates; and (c) other lighting originally installed by the Declarant. Plans for all other exterior lighting must be submitted and approved in accordance with Section 6.9 hereof.

**6.14. Drainage.** Catch basins and drainage areas are for the purpose of controlling the natural flow of water. No obstructions or debris shall be placed in these areas. No Owner or Occupant of any Lot may obstruct or rechannel the drainage flows after the location and installation of drainage swales, storm sewers or storm drains. Declarant, for itself and its affiliates, reserves the right to prepare sloping banks, cut or fill, on a three (3) to one (1) slope on all streets and roads. Declarant, for itself and its affiliates, hereby reserves a perpetual easement across the Community 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 cost and expense.

**6.15. 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.

**6.16. Clotheslines, Garbage Cans, Woodpiles, Etc.; Trash Removal.**

(a) General. All clotheslines, garbage cans, woodpiles, and other similar items shall be located or screened so as to be concealed from the view of neighboring Lots, streets and property located adjacent to the Lot. All rubbish, trash and garbage shall be regularly removed from the Lot and shall not be allowed to accumulate thereon. No garbage or trash shall be placed on the Common Property, temporarily or otherwise, except as provided herein. Declarant, however, hereby expressly reserves the right to dump and bury rocks and trees on property within the Community as needed for efficient construction.

(b) Trash Removal. The Association may, but shall not be required to, contract with a private trash collection company to remove all usual and customary household trash on a regular basis from the Community. The costs associated with such trash removal and/or any recycling shall be a line item in the Association's budget and shall be included in the annual assessment. 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 Lot. Trash and recycling receptacles shall be placed at the curb no earlier than 5:00

p.m. the day before pick up and shall be removed within twenty-four (24) hours. Trash removal and recycling shall also be subject to such reasonable rules and regulations as the Board of Directors may adopt from time to time, in its discretion.

**6.17. Subdivision of Lot.** No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Board or its designee. Declarant, however, hereby expressly reserves the right to replat any Lot(s) 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.

**6.18. Guns.** The use of firearms, or the discharge of fireworks in the Community is prohibited. The term "firearms" includes, without limitation "B-B" guns, pellet guns and small firearms of all types. The term fireworks includes those items listed in O.C.G.A. Section 25-10-1, as amended.

**6.19. 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 Lot, without the prior written consent of the Board or its designee.

**6.20. Exterior Colors.**

(a) **Detached Lots.** The exterior of all improvements, including, without limitation, residences, constructed, erected, allowed or maintained upon any Detached Lot 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, approved for use in the Community by the Board or its designee pursuant to Section 6.9 hereof or otherwise in compliance with applicable Architectural Guidelines.

(b) **Townhome Units.** As provided in Article 8 hereof, exterior maintenance of Townhome Units, including, without limitation, painting, is the responsibility of the Association. Accordingly, Owners shall not paint or otherwise alter the exterior of any Townhome Unit or improvements constructed or maintained thereon without the prior written consent of the Board or its designee. The exterior of all improvements, including, without limitation, residences, constructed, erected, allowed or maintained upon any Townhome Unit must be painted or repainted in a color as approved by the Board or its designee. Notwithstanding the foregoing, any Owner who performs maintenance on or to a Townhome Unit which is the responsibility of the Association pursuant to this Declaration shall not be entitled to any reduction in the payment of any annual, special, specific of Townhome Unit assessment.

**6.21. Detached Structures.** No detached structure shall be placed, erected, allowed or maintained upon any Exclusive Common Property or any other portion of the Community without the prior written consent of the Board or its designee unless installed by Declarant. 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.

Notwithstanding anything to the contrary herein, nothing in this Section shall be construed to prevent Declarant, its affiliates 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 on Lots 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 or its designee.

**6.23. Flags.** Except for flags which may be installed by the Declarant, no flags may be displayed on any Lot without prior written approval in accordance with the provisions of Section 6.9 hereof; provided, however no such approval shall be required to display the flag of the United States of America and the current flag of the State of Georgia on a Lot in accordance with the provisions of the U.S. Flag Code (36 US Code 10) and usual and customary practice. The Board of Directors of the Association 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 the display of the United States flag; provided, 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 Lot in the Community in contravention of the Freedom to Display the American Flag Act of 2005.

**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 reasonable 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 Lot shall be white or off-white or such other acceptable color determined by the Board or articulated 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.

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

**6.27. Prohibition of Damage.** Without the prior written consent of the Board, nothing shall be done or kept in the Community which would increase the rate of insurance which the Association is obligated to obtain hereunder, which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body, or which would increase the common expenses of the Association. No Owner shall do any work which, in the reasonable opinion of the Board or its designee, would jeopardize the soundness or

safety of the Community or any structure located within the Community, would reduce the value thereof, or would impair any easement or hereditament thereto, without in every such case the unanimous prior written consent of all members of the Association and their Mortgagees. No damage to or waste of the Common Property, or any part thereof, or of the exterior of any Lot 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 Lot.

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

**6.29. Leasing.** Lots may be leased for residential purposes. All leases shall be in writing. Lots may be leased only in their entirety; no fraction or portion may be leased without prior written Board approval. Unless otherwise provided by the Board of Directors, all leases shall have a minimum term of at least twelve (12) months.

(a) Notice. Within ten (10) days after executing a lease agreement for the lease of a Lot, the Owner shall provide the Board with the following information: (i) a copy of the fully executed lease agreement; (ii) the name of the lessee and all other Occupants of the Lot; (iii) the phone number of the lessee; (iv) the Owner's address and phone number other than at the Lot; and (v) other such information as the Board may reasonably require.

(b) General. The Owner must provide the lessee with copies of the Declaration, Bylaws, the rules and regulations of the Association and the lease shall provide that the Owner has made available to the lessee copies of the Declaration, Bylaws, the rules and regulations and Architectural Guidelines.

(c) Compliance with Declaration, Bylaws, Rules and Regulations and Architectural Guidelines. Each Owner covenants and agrees that any lease of a Lot 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 Lot, agrees to the applicability of this covenant and incorporation of the following language into the lease:

Lessee shall abide by and comply with all provisions of the Declaration, Bylaws and rules and regulations and Architectural Guidelines adopted pursuant thereto and shall control the conduct of all other Occupants and guests of the leased Lot in order to ensure such compliance. Owner agrees to cause all Occupants of his or her Lot to comply with the Declaration, Bylaws and the rules and regulations and Architectural Guidelines adopted pursuant thereto and is responsible for all violations caused by such Occupants, notwithstanding the fact that such Occupants of the Lot are fully liable and may be sanctioned for any violation of the Declaration, Bylaws and rules and regulations and Architectural Guidelines adopted pursuant thereto. In the event that the lessee or a person living with the lessee violates the Declaration, Bylaws or a rule or regulation or Architectural Guideline for which a fine is imposed, notice of the violation shall



be given to the Owner and the lessee, and such fine may be assessed against the lessee in accordance with the provisions contained herein. If the fine is not paid by the lessee within the time period set by the Board of Directors, 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 Lot.

(i) Use of Common Property. The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Property, including any Exclusive Common Property.

(ii) Liability for Assessments. If an Owner who is leasing his or her Lot fails to pay any annual, special or specific assessment or any other charge owed to the Association for a period of more than thirty (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 of Directors, 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, 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 of Director's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If lessee fails to comply with the Board of Director's request to pay assessments or other charges, lessee shall pay to the Association all amounts authorized under the Declaration as if lessee were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

**6.30. Traffic Regulations.** All vehicular traffic on any private streets, drives or alleys in the Community shall be subject to the provisions of state and local laws concerning the operation of motor vehicles on public streets. The Association is hereby authorized to promulgate, administer, and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including imposing 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 violations thereof. In the event of a conflict between such provisions of state and local laws and such rules and regulations promulgated by the Association, the rules and regulations of the Association shall govern. Only drivers properly licensed to operate motor vehicles on the public roads within the State of Georgia may operate any type of motor vehicle within the Community. All vehicles of any kind and nature which are operated on the streets, drives 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.

**6.31. Georgia Power Company Easement Restrictions.** Each Owner and Occupant acknowledges that a portion of the Common Property is encumbered by the Georgia Power Company Easement. Owners and Occupants shall not engage in any activity or conduct which may interfere with the right of Georgia Power Company to exercise the rights afforded to it in

the Georgia Power Company Easement. No Owner shall have any right to place any structure, improvement, thing, or any other improvement in the Georgia Power Easement except for those items which are expressly permitted by Georgia Power Company pursuant to the Easement Agreement or any document related thereto or used in connection therewith. Any Owner or Occupant desiring to install any improvement in such area should contact the Board of Directors, who shall maintain in its records a list of permissible items which may be installed in the Georgia Power Company Easement. 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 any portion of the Common Property located within the Georgia Power Company Easement, including, without limitation, the Rear Yard Exclusive Easement Area. Each Owner, by acceptance of a deed to a Lot, on behalf of the Owner and the Owner's family members, tenants, guests or invitees, agrees to assume the risk of personal injury, loss and property damage associated with, arising out of or caused by any activity conducted on the Georgia Power Company Easement or by virtue of the fact that the Community contains active power transmission lines. Declarant, the Association and their respective officers, directors, members, agents or representatives shall not in any way be considered insurers or guarantors of the safety of the Owners, Occupants, guests or any other users and shall not be held liable as such for any personal injury, loss or property damage by virtue of the fact that the Community contains active power transmission lines or by reason of any failure to keep any portion of the Common Property in a safe condition, failure to take adequate safety precautions or address known problems, failure to promote safety, ineffectiveness of any safety measure undertaken, or any other reason.

## Article 7

### Insurance and Casualty Losses

**7.1 Insurance Obtained by Association.** The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements located on the Common Property or required to be maintained by the Association under Section 5.1 and blanket insurance for all Townhome Units as provided in Section 8.7 hereof; provided, however, the Association's insurance shall not include an Owner's or Occupant's personal property (which shall be the sole responsibility of the Owner or Occupant, as applicable) or any portion of a Detached Lot. 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.

The Board shall obtain a public liability policy applicable to the Common Property insuring the Association and its members for all damage to third party property or injury to persons 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 Two Million and No/100 Dollars (\$2,000,000.00). If available at reasonable cost, as determined by the Board in its sole discretion, the Board shall also obtain directors' and officers' liability insurance.

The Board is hereby authorized to contract with or otherwise arrange to obtain the insurance coverage required hereunder through the Declarant or its respective affiliates and to reimburse the Person so providing or arranging the insurance coverage for the cost thereof, and 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 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 Article if it has contracted for or otherwise arranged to obtain the required insurance coverage through the Declarant or its affiliates.

Premiums for all insurance shall be a common expense of the Association; provided, however, to the extent feasible, blanket insurance for the Townhome Units shall be assessed as a Townhome Unit assessment as provided in Article 8 hereof. The policies may contain a reasonable deductible.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, 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:

(a) All policies shall be written with a company authorized to do business in the State of Georgia.

(b) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(c) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors 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.

(d) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement, if these are reasonably available, and 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.

(e) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

- (i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners and their respective tenants, servants, agents and guests;
- (ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;
- (iii) that no policy may be canceled, subjected to nonrenewal, invalidated or suspended on account of any one or more individual Owners;
- (iv) 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;
- (v) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and
- (vi) that no policy may be canceled, subjected to nonrenewal, or substantially modified without at least thirty (30) days' prior written notice to the Association.

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, and, if available at reasonable cost, as determined in the sole discretion of the Board, 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 directors' best business 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 ten (10) days' prior written notice to the Association. 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").

## **7.2. Individual Insurance.**

- (a) Townhome Unit Owners. Insurance applicable to the Townhome Units shall be as set forth in Section 8.7 hereof.
- (b) Detached Lot Owners. By virtue of taking title to a Detached Lot subject to the terms of this Declaration, each Owner acknowledges that the Association has no obligation to

provide any insurance for any portion of a Detached Lot and each Owner covenants and agrees with all other Owners and with the Association that each Owner shall obtain and maintain the following: (i) all-risk casualty insurance on the Detached Lot and all structures constructed thereon, which shall cover loss or damage by fire and other hazards commonly insured under an all-risk policy, if reasonably available, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard; (ii) a liability policy covering damage or injury occurring on a Lot; and (iii) insurance covering an Owner's or Occupant's personal property. The policies required hereunder shall be in effect at all times.

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

(a) In General. 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 of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessary to comply with applicable building codes.

(b) Repair and Reconstruction. 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 sixty (60) days after the casualty, at least seventy-five percent (75%) of the Total Association Vote and the Declarant (in the case of property which primarily benefits or is available for use by all Lots), or Owners representing at least seventy-five percent (75%) of the applicable group or class of Lots and the Declarant (in the case of property which primarily benefits or is available for use by a group or class of Lots 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 until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Association's members, levy a special assessment against all Owners (in the case of property which primarily benefits or is available for use by all Lots), or against all Owners in a particular group or class of Lots (in the case of property which primarily benefits or is available for use by such group or class of Lots 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.

In the event that 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.

**7.4. Damage and Destruction – Detached Lots.** The damage or destruction by fire or other casualty to all or any portion of any structures or improvement located on a Detached Lot shall be repaired by the Owner thereof within seventy-five (75) days after such damage or destruction occurred or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period and shall be completed within a reasonable period of time thereafter. Alternatively, the Owner may elect to demolish all improvements on such Lot and remove all debris therefrom within seventy-five (75) days after such damage or destruction occurred and such Detached Lot shall thereafter be maintained in a neat and attractive conditions consistent with the Community-Wide Standard and this Declaration. In the event of noncompliance with this provision, the Board of Directors shall have all enforcement powers specified in Section 14.1 of this Declaration, including, without limitation, the imposition of reasonable monetary fines.

**7.5. Insurance Deductible.** 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 are responsible hereunder, or under any declaration or contract requiring the Association to obtain such insurance, for maintenance of the damaged or destroyed property.

## **Article 8** **Townhome Units**

**8.1. General.** The provisions set forth in this Article shall be applicable only to the Townhome Units and shall be in addition to the covenants, conditions, restrictions and easements set forth in this Declaration.

**8.2. Townhome Unit Boundaries.** The vertical boundaries of each Townhome Unit are as shown on the applicable subdivision plat recorded in the Office of the Clerk of Superior Court for Fulton County, Georgia. The Declarant anticipates that each plot of land constituting a Townhome Unit will consist of the land under the footprint of the Townhome Unit. Accordingly, Townhome Units do not have a front or back yard; all property located outside of the boundary of a Townhome Unit will be Common Property; provided, however, each Owner will have the right to use Exclusive Common Property as provided herein.

**8.3. Townhome Unit Budget and Assessments.**

(a) **General.** It shall be the duty of the Board to prepare a budget covering the estimated expenses to be incurred during the coming year which exclusively benefit the Townhome Units, including, without limitation, expenses for insurance and expenses to maintain

the Townhome Units as provided herein. Townhome Unit assessments shall be allocated equally among all of the Townhome Units. The Board shall cause a copy of such budget and notice of the amount of the Townhome Unit assessments for the coming year to be delivered to each Owner of a Townhome Unit at least thirty (30) days prior to the due date of the Townhome Unit assessment. The budget and Townhome Unit assessment shall become effective unless disapproved by a majority of the Owners of Townhome Units and the Declarant. Notwithstanding the foregoing, however, in the event the membership and Declarant disapprove the proposed budget or the Board fails for any reason to determine the budget for any period, then and until such time as a budget shall have been determined, as provided herein, the budget in effect shall continue. In addition, the Board shall levy a Townhome Unit assessment upon the request of the Owners holding two-thirds (2/3) of the Total Association Vote applicable to Townhome Units.

(b) Payment of Townhome Unit Assessments. Townhome Unit assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors, which may include, without limitation, acceleration, upon ten (10) days' written notice for delinquents. Unless otherwise provided by the Board, the Townhome Unit assessment shall be paid in one annual installment.

(c) Special Townhome Unit Assessments. Notwithstanding anything to the contrary herein, in the event that the budget for the Townhome Units is inadequate to cover any unbudgeted or unanticipated expenses, the Board of Directors may levy a special assessment against the Owners of Townhome Units in the same manner as special assessments levied pursuant to Section 4.4 hereof. Notwithstanding anything to the contrary herein the assessments applicable to the Townhome Units set forth in this Section 8 shall be in addition to any assessments levied pursuant to Article 4 hereof.

#### **8.4. Townhome Unit Maintenance.**

(a) Townhome Unit Maintenance by Association. As provided in Section 5.1 of the Declaration, the Association shall be responsible for maintaining certain portions of the Townhome Units. The Association shall maintain and keep in good repair the following: (i) all water and sanitary sewer pipes, lines, conduits or facilities which serve more than one (1) Townhome Unit, regardless of whether the same are located within or outside of the boundaries of such Townhome Unit, to the extent that such pipes and facilities are not maintained on an ongoing basis by a public or private utility company or by a governmental authority; (ii) exterior surfaces of garage doors (but the Owner shall be responsible for the operation of the garage doors and all related components and equipment); (iii) all roofs, downspouts and gutters, including, roof decking and shingles; (iv) all exterior building surfaces with the exception of hardware and glass; provided, however, the Association shall not be responsible for waterproofing foundations either above or below grade; and (v) the painting of shutters attached to the Townhome Unit.

Upon resolution of the Board and approval by Owners representing at least a Majority of the Townhome Units and the consent of Declarant, the Association may assume responsibility

for providing additional exterior maintenance of such Townhome Unit and the structures thereon, with the expenses thereof to be paid as a Townhome Unit assessment as provided herein.

(b) Townhome Unit Maintenance by Owner. Except as specifically provided above, the Association shall not be responsible for, and a Townhome Unit Owner shall be responsible for, regardless of whether located within or outside the Townhome Unit boundary, the maintenance, repair, and replacement of: (i) the structural components of the Townhome Unit, including building foundations and footings; (ii) any walkway, steps, or stoops exclusively serving a Townhome Unit; (iii) windows (including glass surfaces) and window frames, screens, glass, doors (including screen and storm doors, hinges, frames and door frames and hardware which is part of the entry system, with the exception of the exterior surfaces of garage doors which shall be maintained by the Association) and door frames on the Townhome Unit; (iv) any heating and air conditioning unit or similar equipment, and pipes, wires, or conduits, serving only the Townhome Unit; (v) any personal property, appliances, equipment or fixtures contained within the Townhome Unit; (vi) pipes which exclusively serve one (1) such Townhome Unit, whether located within or without the boundaries of such Townhome Unit (vii) foundations and footings, including waterproofing; (viii) lighting fixtures pertaining to a particular Townhome Unit and being located outside an entryway or in a garage; and (ix) lighting fixtures pertaining to a particular Townhome Unit and being located outside an entryway or in a garage.

#### **8.5. Party Walls and Party Fences.**

(a) General Rules of Law to Apply. Each wall or fence built as a part of the original construction of the Townhome Units which shall serve and separate any two (2) adjoining Townhome Units shall constitute a party wall or fence and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and fences and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall or fence shall be shared by the Owners who make use of the wall or fence in equal proportions.

(c) Damage and Destruction. If a party wall or fence is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the wall may restore it, and if the other Owner or Owners thereafter make use of the wall or fence, they shall contribute to the cost of restoration thereof 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.

(d) 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.



**8.6. Use Restrictions and Rules.** The use restrictions set forth in this Section 8.6 shall be in addition to the use restrictions set forth in Article 6 of this Declaration.

(a) Heating of Units in Colder Months. In order to prevent water pipes from breaking during colder months of the year resulting in damage to Townhome Units, increased common expenses, and increased insurance premiums or cancellation of insurance policies due to numerous damage claims, the thermostats within all Townhome Units shall be maintained with the heating operating and at a minimum of fifty (50°) degrees Fahrenheit when the temperature is forecasted to or does reach thirty two degrees (32°) degrees Fahrenheit or below. Owners shall take all steps possible on a timely basis to keep heating equipment, including, but not limited to, the thermostat, in good working order and repair. If the heating equipment is not working, the Owner shall immediately inform the Owners of the other Townhome Units of such equipment failure and of the time needed in order to repair the equipment and during such time shall take reasonable steps to keep the Townhome Unit heated sufficiently to prevent the breakage of water pipes.

(b) Measures Related to Insurance Coverage.

The Board, upon resolution, shall have the authority to require all or any Townhome Unit Owner(s) to do any act or perform any work involving portions of the Community that are the maintenance responsibility of such Owner which will, in the Board's sole discretion, decrease the possibility of fire or other damage to any improvements located in the Community, reduce the insurance premium paid by the Association for any insurance coverage, or otherwise assist the Board in procuring or maintaining such insurance coverage. This authority shall include, but need not be limited to, requiring all such Owners to turn off cut-off valves, which may now or hereafter be installed, during winter months for outside water spigots; requiring such Owners to insulate pipes sufficiently or take other preventative measures to prevent freezing of water pipes; requiring such Owners to install smoke detectors; requiring such Owners to make improvements to such Owner's Townhome Unit; and such other measures as the Board may reasonably require, so long as the cost of such work does not exceed Five Hundred and No/100 Dollars (\$500.00) per Townhome Unit in any twelve (12) month period.

In addition to, and not in limitation of, any other rights the Association may have, if any Townhome Unit Owner does not comply with any reasonable requirement made by the Board pursuant to this subsection, the Association, upon fifteen (15) days' written notice (during which period the Townhome Unit Owner may perform the required act or work without further liability), may perform such required act or work at the Townhome Unit Owner's sole cost and expense. Such cost shall be a specific assessment and a lien against the Townhome Unit and shall be collected as provided herein for the collection of assessments. The Association shall have all rights necessary to implement the requirements mandated by the Board pursuant to this subsection (b), including, without limitation, a right of entry during reasonable hours and after reasonable notice to the Owner or Occupant of such Townhome Unit, except that access may be had at any time without notice in an emergency situation.

### **8.7. Insurance on Townhome Units.**

(a) General. By virtue of taking title to a Townhome 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 townhome Unit. Each Townhome Unit Owner covenants and agrees with all other Owners to obtain and maintain the following: (a) a liability policy covering damage or injury occurring on a Townhome Unit; and (b) insurance covering an Owner's or Occupant's personal property. The policies required hereunder shall be in effect at all times.

(b) Property Coverage. As provided in Section 7.1 hereof, unless otherwise determined by resolution of the Board and at least thirty (30) days' prior written notice to each Owner, the Association shall obtain a blanket insurance policy providing property insurance coverage for all structures on Townhome Units. The premiums for property insurance which the Association maintains on behalf of the Townhome Units shall, if reasonably possible, be included as a line item in the budget for the Townhome Units and included as part of the Townhome assessment under Article 8 hereof.

(c) Insurance Deductible. 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 Townhome Unit or a Townhome Unit and the Common Property, 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 Townhome Unit separately. If any Townhome Unit Owner fails to pay the deductible when required hereunder, the Association shall assess the cost to any such Owner pursuant to Section 4.5 of this Declaration.

**8.8. Amendments to Article 8.** As long as the substantive rights of existing Owners are not materially adversely affected, the Declarant may unilaterally amend this Declaration to modify the provisions of this Article or impose additional covenants and restrictions for the Townhome Units. Except for unilateral amendments by Declarant as provided herein, this Article 8 may not be amended without the affirmative vote or written consent of Owners of at least two-thirds (2/3) of the Townhome Units, and the consent of the Declarant (so long as the Declarant owns any property for development and/or sale in the Community or has the right unilaterally to annex additional property to the Community).

## **Article 9**

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

#### **9.1. 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 twenty five (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. 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, the Declarant may unilaterally amend this Declaration to reflect the different character of any such annexed real property.

(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 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.

**9.2. Annexation by Association.** Subject to the consent of the owner thereof and the consent of the Declarant (so long as Declarant owns any property for development and/or sale in the Community or has the right unilaterally to annex additional property to the Community), upon the affirmative vote or written consent, or any combination thereof, of Owners of at least two-thirds (2/3) of the Lots, 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 in the Fulton County, Georgia land records, unless a later effective date is provided therein.

**9.3. Withdrawal of Property.** So long as Declarant has the right to annex additional property pursuant to Section 9.1 hereof, 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 owner(s) of such property) from the coverage of this Declaration, to the extent originally included in error or as a result of any changes whatsoever in the plans for the Community, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Community. Any such withdrawal shall be accomplished by the filing for record of an amendment to this Declaration describing the property 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 Owner(s) of the property being removed and shall not require the vote or consent of any other Person.

**9.4. 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 prior 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 Declaration, Bylaws or Articles.

## **Article 10** **Easements**

**10.1. Easements for Encroachment and Overhang.** There shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and such portion or portions of the Common Property adjacent thereto or as between adjacent Lots due to 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 five (5) feet, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Property or as between adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, tenant or the Association.

### **10.2. Easements for Use and Enjoyment.**

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

(i) the right of the Association to suspend the voting rights of a Lot Owner and the right of an Owner to use the Common Property for any period during which any assessment against such Owner's Lot remains unpaid; and, for a reasonable period of time, for an infraction of the Declaration, Bylaws, or rules and regulations;

(ii) the right of the Association to borrow money for the purpose of improving the Common Property, or any portion thereof, or for constructing, repairing or improving any

facilities located or to be located thereon, and give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property; provided, however, the lien and encumbrance of any such Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant and/or its affiliates, any Lot or Lot Owner, and/or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot 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 Lot or Lot Owner, and/or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Community); no such Mortgage given by the Association shall be effective unless an instrument agreeing to such Mortgage has been approved by Owners of at least two-thirds (2/3) of the Lots (other than Lots of Declarant so long as the consent of Declarant is required) and the consent of Declarant (so long as Declarant owns any property for development and/or sale in the Community or has the right unilaterally to annex property to the Community);

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

(iv) the right of the Association to dedicate, transfer or convey all or any portion of the Common Property subject to such conditions as may be agreed to by the members of the Association; no such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by Declarant (so long as Declarant owns any property for development and/or sale within the Community and has the right unilaterally to annex additional property to the Community) and Owners representing at least two-thirds (2/3) of the Total Association Vote;

(v) 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 Property to the Association;

(vi) all encumbrances and other matters shown by the public records affecting title to the Common Property, including those easement rights reserved for the benefit of the Apartment Owner and any of its successors, successors in title, assigns, tenants or occupants in accordance with the Easement Agreement;

(vii) the right of Georgia Power Company to exercise those rights reserved to it in the Georgia Power Easement; and

(viii) All rights of Lot Owners to use and enjoy the Exclusive Common Property as provided herein.

(b) Any Lot Owner may delegate his or her right of use and enjoyment in and to the Common Property and facilities located thereon to the members of his 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 Lot if leased.

**10.3. Easements for Utilities – Association.** There is hereby granted to 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. 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.

**10.4. Easement for Utilities – Lot Owners.** Declarant hereby establishes for the benefit of each Townhome 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 Townhome Unit and situated in, on or under any other Townhome Unit or the Common Property, including Exclusive Common Property. In the event that any Owner desires access to another Townhome 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 Townhome Unit(s) at least two (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 contractor(s). Access in emergency situations shall be granted immediately upon request. Any Owner of a Townhome 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 Townhome Units, reasonable steps shall be taken to protect such Townhome Units and the property of the Owners and Occupants thereof, and damage shall be repaired by the Person causing the damage at its sole cost and expense.

**10.5. Easements for Association Maintenance.** There is hereby expressly granted 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 Article 5 and Article 8 hereof. 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.

**10.6. Easements for Lot Owner Maintenance and Repair.** There shall be reciprocal appurtenant easements between adjacent Lots and an easement over adjacent Common Property, including Exclusive Common Property for the purpose of maintaining or repairing the improvements, including, without limitation, landscaping, located on each Lot, which easement shall extend to a distance of not more than five (5) feet as measured from any point on the boundary of the Lots 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 Lot Owner exercising this easement right shall be liable for the prompt repair of any damage to the Lot or Common Property over which this easement is exercised which is caused by such maintenance or repair. The damaged portions of such Lot or Common Property shall be restored to substantially the same condition as existed prior to the damage.

**10.7. Easements for Entry.** In addition to the right of the Board to exercise self-help as provided in Section 12.2 hereof, 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 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 in the event an Owner or Occupant fails or refuses to cure the condition upon request by the Board.

**10.8. Easements for Entry Features and Street Signs.** There is hereby reserved to the Declarant, 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.

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

**10.10. Easements for Drainage.** There is hereby reserved by the Declarant and granted to the Association an easement upon, across, above and under all storm water drainage easement areas as shown on the recorded subdivision plat(s) 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. In addition, there is hereby reserved to the Declarant and granted to the Association a blanket easement across all Lots for creating and maintaining satisfactory drainage in the Community; provided, however, such easement area shall not include any portion of a Lot within the outer perimeter of the dwelling structure. It is anticipated that increased storm water run-off across downstream Lots 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 6.9 hereof shall have any liability to any Owner due to the increased flow or increased velocity of surface water resulting from approved construction within the Community.

**10.11. Easements for Private Roads, Alleys and Drives.** Declarant hereby grants, conveys, declares, creates, imposes and establishes a perpetual, non-exclusive right-of-way easement for vehicular and pedestrian access, ingress and egress over and across the private streets, drives, roads and alleys located within the Community. At such time as one or more subdivision plats for the property submitted to this Declaration are recorded in the real estate records of the Office of the Clerk of Superior Court of Fulton County, Georgia, any reference to private alleys shall then and thereafter mean a reference to the private streets, roads, alleys and drives as actually constructed and depicted on the recorded subdivision plat. The right-of-way easement herein granted shall permit joint usage of such easement by: (a) the Owners and Occupants; (b) the legal representatives, successors and assigns of the Owners; and (c) invitees and licensees of the Owners and Occupants. Declarant hereby expressly reserves for itself, its successors and assigns, all rights and privileges incident to the ownership of the fee simple estate of any right-of-way easement area which are not inconsistent with the rights and privileges herein granted, including, without limitation, the right to maintain one or more proprietary signs on the easement area and the right to grant additional non-exclusive easements to third parties, over, under and across the easement area. Declarant hereby reserves for the benefit of Declarant and grants to the Association as Common Property, the perpetual nonexclusive right and easement upon, over and across those utility easement areas and private streets and roads for the installation, maintenance, and use of such streets and roads, sidewalks, traffic directional signs, grading for proper drainage of said streets and roads, and related activities and improvements.

**10.12. Easement for Declarant During Construction and Sale Period.** Notwithstanding any provisions contained in this Declaration, the Bylaws, the Articles of Incorporation of the Association, rules and regulations, use restrictions, and any amendments to any of the foregoing, 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 (such other property is hereinafter referred to



as "Additional Property"). The reserved easement shall constitute a burden on the title to the Community and specifically includes, but is not limited to:

(a) the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the Community; the right to tie into any portion of the Community with streets, driveways, parking areas and walkways; and 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;

(b) the right to use (continually or from time to time) without charge any clubhouse or similar structure 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

(c) the right to construct, install, replace, relocate, maintain, repair, use and enjoy signs, model residences, construction trailers and sales offices in the Community.

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.

If these reserved easements are exercised without annexing any Additional Property to the Community, the owners of the affected Additional Property shall share the costs, if any, of using and maintaining utility and similar facilities, including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities, with the Owners in the Community in the proportion that the number of completed dwellings on the affected Additional Property bears to the sum of the number of completed dwellings on the affected Additional Property plus the number of Lots in the Community. For the purposes of this provision, a dwelling on the affected Additional Property shall be considered completed when a certificate of occupancy has been granted. The allocation of expenses and the collection therefor may be done on a monthly, quarterly or annual basis, as may reasonably be determined by the Association in accordance with this Declaration. If any of the Additional Property is added to the Community, from the time of the annexation, the sharing of costs and expenses and the use of any property so added shall be governed by this Declaration, rather than by these reserved easements.

This Section shall not be amended without the prior written consent of the Declarant so long as Declarant owns any property primarily for development and/or sale in the Community or has the right unilaterally to annex additional property to the Community.

## **Article 11** **Condemnation**

Whenever all or any part of the Common Property 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 Lots 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 7.3 above, applicable to damage or destruction of property insured by the Association, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

## **Article 12** **General Provisions**

**12.1. Enforcement.** Each Owner and every Occupant of a Lot shall comply strictly with the Bylaws, the rules and regulations, the use restrictions, 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 Lot, if any. The Board of Directors may impose fines or other sanctions, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the Bylaws, the rules and regulations or Architectural Guidelines shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board of Directors, on behalf of the Association, or, in a proper case, by an aggrieved Owner. Failure by the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Board shall have the right to record in the appropriate land records a notice of violation of the Declaration, Bylaws, rules and regulations, use restrictions or Architectural Guidelines 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.

**12.2. 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 Lot or any portion of the Common Property to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates this Declaration, the Bylaws, the rules and regulations, the use restrictions or Architectural Guidelines; provided, however, nothing herein shall permit entry into any dwelling on a Lot without the permission of the Owner thereof. Unless an emergency situation exists, the Board shall give the violating Lot Owner ten (10) days' written notice of its intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after reasonable notice. All costs of self-help, including reasonable attorney's fees actually incurred, shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of assessments.

**12.3. Duration.** 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; provided, 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: (a) automatically extended for successive periods of ten (10) years, unless a written instrument reflecting disapproval signed by the then Owners of at least two-thirds (2/3) of the Lots and the Declarant (so long as the Declarant owns any property for development and/or sale in the Community or has the right unilaterally to annex additional property to the Community) has been recorded within the year immediately preceding the beginning of a ten (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 (b) extended as otherwise provided by law. 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.

#### **12.4. Amendment.**

(a) By Declarant. This Declaration may be amended unilaterally at any time and from time to time by Declarant: (i) 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; (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (iii) if such amendment is required by an institutional or governmental lender or purchaser of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or (iv) if such amendment is necessary to enable any governmental agency or reputable private insurance company to guarantee or insure Mortgage loans on the Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's Lot unless any such Lot Owner shall consent thereto in writing.

Further, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not: (i) materially adversely affect the substantive rights of any Owners hereunder to use and enjoy the Owner's Lot; (ii) adversely affect title to any Lot without the consent of the affected Owner; or (iii) 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.

(b) By the Board. The Board of Directors may, with the written consent of the Declarant and without a vote of the members, amend the Declaration for the following purposes: (i) 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; (ii) if such amendment is necessary to enable any reputable title insurance

company to issue title insurance coverage with respect to the Lots subject to this Declaration; (iii) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, without limitation, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or (iv) if such amendment is necessary to enable any governmental agency or private insurance company, including without limitation, the U.S. Department of Housing and Urban Development and the U.S. Department of Veterans Affairs, to insure or guarantee Mortgage loans on the Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Lot unless the Owner of such Lot consents thereto in writing; and (v) on and after the date that all Lots have been improved with a dwelling and conveyed to an Owner for residential occupancy, for the purpose of electing to be governed by and thereafter complying with the provisions of the Georgia Property Owners' Association Act, O.C.G.A. § 44-3-220 *et seq.*

(c) 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 Owners of at least two-thirds (2/3) of the Lots and the consent of Declarant (so long as the Declarant owns any property for development and/or sale in the Community or has the right unilaterally to annex additional property to the Community). Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified therein. 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 so long as the Declarant owns any property primarily for development and/or sale in the Community or subject to annexation by the Declarant to the Community.

Any lawsuit challenging any aspect of an amendment to this Declaration must be filed in a court of competent jurisdiction in the county in which the Community is located within one (1) year of the recordation of such amendment.

**12.5. 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.

**12.6. 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.

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

**12.8. 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.

**12.9. Books and Records.**

(a) Inspection by Members and Mortgagees. This Declaration, the Bylaws, copies of rules and use restrictions, 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 member of the Association 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.

**12.10. Financial Statements.** Financial statements for the Association shall be compiled annually in the manner as the Board of Directors may decide; provided, however, after having received the Board's financial statements at the annual meeting, the Owners, by a Majority 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 ninety (90) days of the date of the request.

**12.11. Notice of Sale or Lease.** In the event an Owner sells or leases a Lot, the Owner shall, within ten (10) days after the sale of a Lot, or in the case of a lease, within ten (10) days after entering into a lease agreement, give to the Association, in writing, the name of the purchaser or lessee of the Lot and such other information as the Board may reasonably require.

**12.12. Agreements.** Subject to the prior approval of Declarant, so long as the Declarant has an option to unilaterally subject additional property to this Declaration as provided in Article 9 above, all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors shall be binding upon all Owners, their heirs, legal representatives, successors, assigns and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

**12.13. Variances.** Notwithstanding anything to the contrary contained herein, the Board of Directors or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation, Architectural Guideline or use restriction promulgated pursuant thereto 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.

**12.14. Litigation.** No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least seventy-five percent (75%) of the Total Association Vote. This Section shall not apply, however, to: (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article 4 hereof; (c) proceedings involving challenges to ad valorem taxation; (d) counterclaims brought by the Association in proceedings instituted against it; or (e) actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of a contract for goods or services to which the Association is a party. This Section shall not be amended unless such amendment is made by the Declarant pursuant to Section 12.4 hereof, or is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

**12.15. Implied Rights.** The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws, the Articles of Incorporation of the Association, any use restriction or rule, 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.

**12.16. 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 Lots 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.

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

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Declarant, has caused this Declaration to be executed under seal this 14 day of JANUARY, 2015.

DECLARANT: **JWC COLLIER VALE, LLC**, a Georgia limited liability company

By: CHATTAHOOCHEE ENTERPRISES, INC., as its manager

By: [Signature]  
Print Name: SAM SPARUS  
Title: CEO

Signed, sealed, and delivered in the presence of:

[CORPORATE SEAL]

[Signature]  
WITNESS

Jana D. Hutson  
NOTARY PUBLIC

**JANA D. HUTTON**  
**NOTARY PUBLIC**  
**MY COMMISSION EXPIRES SEPTEMBER 10, 2016**  
**COBB COUNTY, GEORGIA**



My Commission Expires: September 10, 2016



CONSENT OF LIEN HOLDER

STATE BANK AND TRUST COMPANY, INC., a banking corporation, ("Lender"), as holder of that certain Deed to Secure Debt and Security Agreement (Land Loan), dated November 26, 2013 and recorded December 3, 2013 at Deed Book 53387, Page 395, *et seq.*, Fulton County, Georgia land records (hereinafter referred to as "Security Deed"), encumbering a portion of the property described in Exhibit "B" hereof, hereby consents to the Declaration and agrees that any foreclosure of the security title and interest under the Security Deed or any other instrument that Lender holds shall be subject to the Declaration and any amendments thereto with respect to the property described in Exhibit "B".

This 16<sup>th</sup> of January, 2015.

LENDER: STATE BANK AND TRUST COMPANY,  
a banking corporation

By: [Signature]  
Print Name: Dale McCain Boyd  
Title: SVP

Signed, sealed, and delivered  
in the presence of:

[BANK SEAL]

[Signature: Marilyn M. Wilson]  
WITNESS

[Signature: Paula K. McMahon]  
NOTARY PUBLIC

My Commission Expires:

[NOTARY SEAL]



**EXHIBIT "A"**  
**Property Submitted to the Declaration**

ALL that tract or parcel of land lying and being in Land Lots 185 and 186, 17<sup>th</sup> District, City of Atlanta, Fulton County, Georgia and being more particularly described as follows:

COMMENCING at the point where the easterly right of way margin Defoors Ferry Road (40' Right of Way) intersects the northerly right of way margin of Glenn Avenue (20' Closed Right of Way);

THENCE in a northerly direction along the easterly right of way margin of Defoors Ferry Road a distance of 372.90 feet to an iron pin found (1/2" rebar), said point being the TRUE POINT OF BEGINNING;

THENCE continuing along the easterly right of way margin of Defoors Ferry Road, North 06 degrees 20 minutes 19 seconds West for a distance of 41.17 feet to an iron pin found (1/2" rebar) on the southerly property line of the property now or formerly owned by Carondelet Apartments, LLC;

THENCE departing the easterly right of way margin of Defoors Ferry Road, North 87 degrees 11 minutes 22 seconds East for a distance of 557.94 feet along the southerly property line of the property now or formerly owned by Carondelet Apartments, LLC to an iron pin found (1/2" rebar) on the easterly property line of the property now or formerly owned by Carondelet Apartments, LLC;

THENCE North 00 degrees 34 minutes 54 seconds East for a distance of 556.58 feet along the easterly property line of the property now or formerly owned by Carondelet Apartments, LLC and ERP Operating Limited Partnership to an iron pin found (1/2" rebar) on the southerly property line of the property now or formerly owned by ERP Operating Limited Partnership;

THENCE North 87 degrees 43 minutes 12 seconds East for a distance of 579.30 feet along the southerly property line of the property now or formerly owned by ERP Operating Limited Partnership to an iron pin found (1/2" rebar) on the westerly right of way margin of Interstate 75 (Right of way Varies);

THENCE South 18 degrees 13 minutes 52 seconds East for a distance of 325.80 feet along the westerly right of way margin of Interstate 75 to a point;

THENCE continuing along the westerly right of way margin of Interstate 75, North 62 degrees 36 minutes 12 seconds East for a distance of 50.00 feet to an iron pin found (1/2" rebar);

THENCE continuing along the westerly right of way margin of Interstate 75, South 21 degrees 28 minutes 48 seconds East for a distance of 21.60 feet to an iron pin found (1/2" rebar) on the westerly property line of the property now or formerly owned by David L. Kuniansky and Douglas S. Kuniansky;

THENCE departing the westerly right of way margin of Interstate 75, South 01 degrees 07 minutes 52 seconds East for a distance of 279.00 feet along the westerly property line of the property now or formerly owned by David L. Kuniansky and Douglas S. Kuniansky to an iron pin found (1/2" rebar) on the northerly property line of the property now or formerly owned by David L. Kuniansky and Douglas S. Kuniansky and the dividing line of Land Lots 185 and 186;

THENCE North 89 degrees 06 minutes 44 seconds West for a distance of 220.97 feet along

northerly property line of the property now or formerly owned by David L. Kuniansky and Douglas S. Kuniansky and the dividing line of Land Lots 185 and 186 to an iron pin found (1/2" rebar) on the westerly property line of the property now or formerly owned by David L. Kuniansky and Douglas S. Kuniansky;

THENCE departing the dividing line of Land Lots 185 and 186, South 00 degrees 34 minutes 33 seconds West for a distance of 29.13 feet along the westerly property line of the property now or formerly owned by David L. Kuniansky and Douglas S. Kuniansky to a point;

THENCE South 89 degrees 49 minutes 15 seconds West for a distance of 821.87 feet to a point;

THENCE South 03 degrees 06 minutes 52 seconds East for a distance of 20.27 feet to a point;

THENCE South 86 degrees 53 minutes 08 seconds West for a distance of 50.00 feet along the northerly property line of the property now or formerly owned by Melissa Trussell and Ray Trussell to an iron pin found (1/2" rebar) on the easterly right of way margin of Defoors Ferry Road (40 Right of Way) and the TRUE POINT OF BEGINNING.

Said tract of land contains 9.67 acres more or less.

**EXHIBIT "B"**

**Additional Property Which May be Unilaterally Submitted to the Declaration**

All that tract or parcel of land lying and being in Land Lots 185 and 186 of the 17th District, City of Atlanta, Fulton County, Georgia.

**EXHIBIT "C"**

**BYLAWS**

**OF**

**THE ENCLAVE ON COLLIER NEIGHBORHOOD ASSOCIATION, INC.**

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**BYLAWS**  
**OF**  
**THE ENCLAVE ON COLLIER NEIGHBORHOOD ASSOCIATION, INC.**

**Article I**  
**Name, Membership and Definitions**

**Section 1. Name.** The name of the Association shall be The Enclave on Collier Neighborhood Association, Inc. (the "Association").

**Section 2. Membership.** The Association shall have one (1) class of membership, as is more fully set forth in the Declaration of Protective Covenants for The Enclave on Collier (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.

**Section 3. Definitions.** The words used in these Bylaws shall have the same meaning as set forth in the Declaration, unless the context shall prohibit.

**Article II**  
**Association: Meetings, Quorum, Voting, Proxies**

**Section 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.

**Section 2. First Meeting and Annual Meetings.** An annual or special meeting shall be held within one (1) year from the date the Declaration is recorded. Annual meetings shall be set by the Board so as to occur no later than sixty (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).

**Section 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 twenty-five percent (25%) of the Total Association Vote (the 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.

**Section 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 Lot 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 Lot, 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 ten (10) nor more than thirty (30) days before the date of a meeting.

**Section 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.

**Section 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 five (5) nor more than thirty (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.

**Section 7. Voting.** The voting rights of the members shall be as set forth in the Declaration, and such voting rights are specifically incorporated herein.

**Section 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 Lot, 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 eleven (11) months from the date of the proxy.

**Section 9. Quorum.** The presence, in person or by proxy, of ten percent (10%) of the Total 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.

**Section 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. 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 seventy (70) days of the record date for such action. If less than unanimous consent is obtained, the approval shall be effective ten (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.

**Section 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.

### **Article III**

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

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

**Section 1. Governing Body; Composition.** The affairs of the Association shall be governed by a Board of Directors. Except as provided in Section 2 of this Article, 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.

**Section 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 such time as the first of the following events shall occur: (a) the date when Declarant no longer owns any property for development and/or sale in the Community and no longer has the right to unilaterally annex additional property to the Community; or (b) the surrender by Declarant in writing of the authority to appoint and remove directors and officers of the Association by recording an amendment to such effect in the Fulton County, Georgia land records.

The Declarant intends to surrender control on December 31 of the year in which one hundred percent (100%) of the Lots planned by Declarant to be a part of the Community shall have

been conveyed to Owners for occupancy as a residence. Each Owner, by acceptance of a deed to or other conveyance of a Lot, vests in Declarant such authority to appoint and remove directors and officers of the Association as provided herein. The directors appointed by the Declarant need not be Owners or residents in the Community.

**Section 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 one (1) to five (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 Article III, Section 2 above, the Board of Directors shall consist of three (3) members who shall be elected as provided below.

**Section 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.

**Section 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, directors shall be elected. All eligible members of the Association shall vote on all directors to be elected, and the candidate(s) receiving the most votes shall be elected; provided, however, the initially elected directors shall serve the remainder of their terms.

(c) One (1) director shall be elected by the Owners of the Detached Lots; (1) one director shall be elected by the Owners of the Townhome Units and one (1) director shall be elected at-large by all of the Owners in the Community; it being the intent of this provision to have one member on the Board to represent the concerns and interests of the Owners of the Townhome Units and Detached Lots, respectively, in the Community. Notwithstanding the foregoing, in the event that the Townhome Unit Owners or Detached Lot Owners are unable to elect a director, such director shall be elected at large by all of the Owners in the Community.

It is intended that the elected directors serve staggered terms. Accordingly the initial term of one (1) director shall be fixed at one (1) year, the initial term of one (1) director shall be fixed at two (2) years, and the initial term of one (1) director shall be fixed at three (3). 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 two (2) years. The members of the Board of Directors shall hold office until their respective successors shall have been elected by the Association.

**Section 6. Removal of Directors.** At any regular or special meeting of the Association duly called, any one (1) 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 ten (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 three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of any assessment for more than twenty (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.

**Section 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.**

**Section 8. Organizational Meetings.** The first meeting of the members of the Board of Directors following each annual meeting of the membership shall be held within ten (10) days thereafter at such time and place as shall be fixed by the Board.

**Section 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, but at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter. Notice of the regular schedule shall constitute sufficient notice of such meetings.

**Section 10. Special Meetings.** Special meetings of the Board of Directors shall be held when requested by the President, Vice President or by any two (2) 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 telegram, charges prepaid; 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 four (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 forty-eight (48) hours before the time set for the meeting.

**Section 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.

**Section 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 five (5) nor more than thirty (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.

**Section 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.

**Section 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.

**Section 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.

**Section 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.

**Section 17. Telephonic Participation.** One (1) 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.**

**Section 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 by the Declaration, the Articles of Incorporation of the Association, or these Bylaws directed to be done and exercised exclusively by the members. 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; and

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

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 19. Management Agent.** The Board of Directors may employ for the Association a professional management agent or agents at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. Declarant or an affiliate of Declarant may be employed as managing agent or manager. The term of any management agreement shall not exceed one (1) year and shall be subject to termination by either party, without cause and without penalty, upon ninety (90) days' written notice.

**Section 20. Fining Procedure.** The Board shall not impose a fine (a late charge shall not constitute a fine) unless and until 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;

(iii) a time period, not less than ten (10) days, during which the violation may be abated without further sanction, if such violation is a continuing one, or a statement that any further 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 such circumstances which, in the Board's determination, pose a danger to safety or property; and

(iv) a time period, not less than ten (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 ten (10) days or, 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.

(b) Notice. Within twelve (12) months of such demand, 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.

#### **Article IV** **Officers**

**Section 1. Officers.** The officers of the Association shall be a President, Vice President, Secretary and Treasurer. Any two (2) 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.

**Section 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 Article III, Section

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.

**Section 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.

**Section 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.

**Section 5. Vice President.** 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.

**Section 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.

**Section 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.

**Section 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.

#### **Article V 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.



**Article VI**  
**Miscellaneous**

**Section 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.

**Section 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.

**Section 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.

**Section 4. Amendment.** The provisions of the Declaration applicable to amendment of that instrument shall apply to any amendment of these Bylaws.

**Section 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.