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**DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS**  
**FOR**  
**SHADOWBROOK CROSSING**

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0108816



STATE OF GEORGIA  
COUNTY OF GWINNETT

**DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS**

**FOR**

**SHADOWBROOK CROSSING**

THIS DECLARATION, consisting of covenants, conditions, easements and restrictions, is made on the date set forth below by FD Communities, LLC, a Georgia limited liability company ("Declarant") and SLV Georgia 1 LLC, a Georgia limited liability company ("SLV");

WITNESSETH:

WHEREAS, SLV is the owner of the real property described in Exhibit "A" to this Declaration;

WHEREAS, SLV and Declarant desire to subject the real property described in Exhibit "A" to the provisions of this Declaration and to provide for the subjecting of other real property to the provisions of this Declaration; and

NOW, THEREFORE, SLV and Declarant declare that the real property described in Exhibit "A" to this Declaration, including the improvements constructed or to be constructed thereon, is 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, set forth in this Declaration, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property subject to this Declaration, and shall be binding on all Persons having any right, title, or interest in all or any portion of the real property subject to this Declaration, their respective heirs, legal representatives, successors, successors in title, and assigns and shall be for the benefit of all owners of the property subject to this Declaration.

THIS DECLARATION DOES NOT AND IS NOT INTENDED TO SUBMIT THE COMMUNITY TO THE TERMS OF THE GEORGIA PROPERTY OWNERS ASSOCIATION ACT, O.C.G.A. §44-3-220, *ET SEQ.*



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## ARTICLE 1. DEFINITIONS

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

**Section 1.1. Additional Property** shall mean the real property described in Exhibit "B" attached hereto and incorporated herein, which Declarant and SLV may, but shall have no obligation to, submit to the Community as provided in this Declaration.

**Section 1.2. Architectural Review Committee or ARC** shall mean the committee established to exercise the architectural review powers set forth in Article 6 hereof.

**Section 1.3. Area of Common Responsibility** shall mean and refer to the Common Property, together with other areas, if any, which by the terms of this Declaration or by contract or agreement with any other Person or entity become the responsibility of the Association.

**Section 1.4. Articles or Articles of Incorporation** shall mean the Articles of Incorporation of ShadowBrook Crossing Neighborhood Association, Inc., which have been filed with the Secretary of State of the State of Georgia, as amended.

**Section 1.5. Association** shall mean ShadowBrook Crossing Neighborhood Association, Inc., a Georgia nonprofit corporation, its successors or assigns.

**Section 1.6. Board of Directors or Board** shall mean the appointed or elected body of the Association, as applicable, having its normal meaning under Georgia corporate law.

**Section 1.7. Bylaws** shall refer to the Bylaws of ShadowBrook Crossing Neighborhood Association, Inc., attached to this Declaration as Exhibit "C" and made a part of this Declaration, as amended.

**Section 1.8. Common Expenses** shall mean the expenses anticipated or actually incurred by the Association in maintaining, repairing, replacing, and operating the Common Property and otherwise for the benefit of all Lots.

**Section 1.9. Common Property** shall mean any and all real and personal property and easements and other interests, together with the facilities and improvements located in the Community, now or in the future owned by the Association.

**Section 1.10. Community** shall mean and refer to that certain real property and any easements, conditions and other real property interests therein described in Exhibit "A," attached hereto, and any of the Additional Property that is later submitted to the provisions of this Declaration.

**Section 1.11. Community Instruments** shall mean this Declaration and all exhibits hereto, including the Bylaws, Articles of Incorporation, the plats, plans and survey, and any design standards and rules and regulations of the Association, all as may be supplemented or amended from time to time.

**Section 1.12. 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. This determination, however, must be consistent with the Community-Wide Standard originally established by Declarant.



**Section 1.13. Declarant** shall mean and refer to FD Communities, LLC, a Georgia limited liability company, and such of its successors-in-title who shall (i) acquire and for the purpose of development or sale, all or any portion of the real property described in Exhibit "A" hereto or the Additional Property, and (ii) be designated as Declarant in an assignment of Declarant rights in a written instrument recorded in the Official Records. In all events, there shall only be one "Declarant" at any one time; in no event shall more than one (1) Person have the right to exercise the power and authority of the "Declarant" at any one time.

**Section 1.14. Declarant Control Period** shall mean the period of time during which Declarant is entitled to appoint and remove the members of the Board of Directors as provided in Section 3.2 of the Bylaws.

**Section 1.15. Design Guidelines** shall mean the design guidelines and application and review procedures as more specifically addressed in Article 6 hereof.

**Section 1.16. Domestic Partner** shall mean any adult who cohabitates with an Owner and who has been designated as the Owner's Domestic Partner in a written statement, signed by the Owner and filed with the Association's Secretary. A person shall no longer be a Domestic Partner upon the Secretary's receipt of a written termination notice, signed by either the Owner or the Domestic Partner.

**Section 1.17. Electronic Document** shall mean information created, transmitted, received or stored by electronic means and retrievable in humanly perceivable form including, without limitation, e-mail, web pages, electronic documents, and facsimile transmissions.

**Section 1.18. Electronic Signature** shall mean a signature created, transmitted, received or stored by electronic means and includes, but is not limited to, a Secure Electronic Signature.

**Section 1.19. Eligible Mortgage Holder** shall mean those holders of first Mortgages secured by Lots in the Community who have requested notice of certain items as set forth in this Declaration.

**Section 1.20. Lot** shall mean any plot of land in the Community, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single-family residence site as shown on the Survey.

**Section 1.21. Majority** shall mean those eligible votes by Owners, or other group as the context may indicate, totaling more than fifty percent (50%) of the total eligible number.

**Section 1.22. Mortgage** shall mean 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.

**Section 1.23. Mortgagee** shall mean the holder of a Mortgage.

**Section 1.24. Occupant** shall mean any Person occupying all or any portion of a Lot in the Community for any period of time, regardless of whether such Person is a tenant or the Owner of such Property.

**Section 1.25. Official Records** shall mean the official land records of the Clerk of the Superior Court of Gwinnett County, Georgia.

**Section 1.26. Owner** shall mean and refer to the record owner, whether one (1) 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.





**Section 1.27. Person** shall mean any natural person, as well as a corporation, joint venture, partnership (general or limited), limited liability company, association, trust, or other legal entity.

**Section 1.28. Secure Electronic Signature** shall mean an electronic or digital method executed or adopted by a Person with the intent to be bound by or to authenticate a record, which is unique to the Person using it, is capable of verification, is under the sole control of the Person using it, and is linked to data in such a manner that if the data is changed, the electronic signature is invalidated.

**Section 1.29. SLV** shall mean SLV Georgia 1 LLC, a Georgia limited liability company, and its successors, successors-in-title or assigns taking title to any portion of the real property described in Exhibit "A" or Exhibit "B" hereof for the purpose of development and/or sale, but specifically excluding all owners of Lots on which residential dwellings have been built and which have been conveyed to such owners by residential developers or homebuilders.

**Section 1.30. Supplementary Declaration** shall mean an amendment or supplement to this Declaration, which subjects Additional Property to this Declaration or imposes additional restrictions and obligations on the Community, or a portion thereof.

**Section 1.31. Survey** shall mean the recorded plat of survey for ShadowBrook Crossing Subdivision recorded in the Official Records, as amended.

**Section 1.32. Total Association Vote** shall mean all of the votes attributable to members of the Association (including votes of Declarant and SLV), the consent of Declarant so long as Declarant owns any property for development and/or sale in the Community, and the consent of SLV so long as SLV owns any property for development and/or sale in the Community.

## **ARTICLE 2. PROPERTY SUBJECT TO THIS DECLARATION**

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**Section 2.1. Property Submitted.** The real property which is, by the recording of this Declaration, subject to the covenants and restrictions set forth in this Declaration is the real property described in Exhibit "A" attached and made a part of this Declaration.

**Section 2.2. Other Property.** Only the real property described in Exhibit "A" is made subject to this Declaration. However, by one (1) or more Supplementary Declarations, other real property may be subjected to this Declaration, as provided in Article 14 hereof.

## **ARTICLE 3. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

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**Section 3.1. Membership.** Every Person who is the record owner of a fee interest in any Lot, is subject to this Declaration shall automatically be a member in the Association. Membership shall not include Persons who hold a security interest only and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one (1) 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 go along with and may not be separated from ownership of any Lot.

**Section 3.2. Voting.** Members shall be entitled to one (1) equal vote for each Lot owned. When more than one (1) Person holds an ownership interest in any Lot, the vote for such Lot shall be cast as those Owners decide and instruct the Secretary prior to any meeting. If the Secretary is not instructed, the Lot's vote shall be suspended in the event more than one (1) Owner of a Lot attempts to cast it.



#### ARTICLE 4. ASSOCIATION RIGHTS AND RESTRICTIONS; VARIANCES

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##### Section 4.1. Association Rights and Restrictions.

(a) The Association, acting through its Board of Directors, shall have the right and authority, in addition to, and not in limitation of, all other rights it may have, to:

(i) make and to enforce reasonable rules and regulations governing the use of the Community, including the Lots and the Common Property;

(ii) enforce use restrictions, other Declaration and Bylaws provisions, and rules and regulations by imposing reasonable monetary fines, exercising self-help powers, and suspending use and voting privileges and services paid for as a Common Expense, as provided herein. These powers, however, shall not limit any other legal means of enforcing the use restrictions or Association rules and regulations by either the Association or, in an appropriate case, by an aggrieved Owner;

(iii) grant and accept permits, leases, licenses, utility easements, and other easements necessary for the proper maintenance or operation of the Community under, through, or over the Common Property, as may be reasonably necessary to or desirable for the ongoing development and operation of the Community;

(iv) control, manage, operate and, in the Board's discretion, maintain, replace, alter or improve all portions of the Community for which the Association is assigned maintenance responsibility under this Declaration, and to pay all taxes or other expenses with respect to same;

(v) to represent and act on behalf of the Owners in the event of damage or destruction as a result of casualty loss, condemnation or eminent domain, in accordance with the provisions of this Declaration;

(vi) represent the Owners in dealing with governmental entities on matters related to the Common Property;

(vii) permanently or temporarily close any portion of the Common Property (excluding: (A) any portion of the Common Property the use of which is reasonably necessary for access to or from a Lot, or (B) any portion of the Common Property over, on, upon or which Declarant or SLV have an easement for so long as the Declarant or SLV own any portion of the Property) with thirty (30) days prior notice to all Owners, except that, in emergency situations requiring a temporary closing, prior notice shall not be required so long as notice is given within three (3) days after the closing explaining the reason for the closing. Notwithstanding the above, the Owners may re-open the closed Common Property by a majority of the Total Association Vote, cast at a duly called special or annual meeting;

(viii) enter into Lots for maintenance, emergency, security, or safety purposes, or otherwise to discharge its powers or responsibilities hereunder, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all police officers, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be only during reasonable hours and after reasonable notice to the Owner or Occupant of the Lot. For purposes of this Paragraph, an emergency justifying immediate entry into a Lot shall include, but not be limited to the following situations: a water or other utility leak, fire, strong foul odor, obvious insect infestation or sounds indicating that a person or animal might be injured or sick and require immediate medical attention. No one exercising the rights granted in this subparagraph shall be



liable for trespass, damages, or in any other manner by virtue of exercising such rights. The failure to exercise the rights herein or to exercise said rights in a timely manner shall not create liability to any of the above-referenced parties, it being agreed that no duty to enter a Lot shall exist; and

(ix) acquire, lease, hold, and dispose of tangible and intangible personal property and real property.

(b) **Litigation.** No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of the Owners as hereinafter provided. The Board shall prepare a budget of the total estimated cost of the litigation or proceeding which shall be submitted to the Owners for a vote along with the estimate of the total cost of the litigation or proceeding made by the attorney being retained by the Association for the litigation or proceeding. No capital contribution or reserve account funds shall be used for funding the costs of litigation or proceedings. The proposed litigation or proceeding, the budget, and the special assessment for litigation, must all be approved by a vote of the Owners representing at least two-thirds (2/3) of the Total Association Vote. This subparagraph shall not apply, however, to (a) actions involving imposition and collection of assessments as provided herein, (b) actions brought by the Association to enforce any covenant in this Declaration (including, without limitation, the foreclosure of liens); (c) proceedings involving challenges to ad valorem taxation, (d) counterclaims brought by the Association in proceedings instituted against it, (e) any land-use or zoning proceedings, (f) actions brought by the Association for damages in magistrate court, or (g) actions brought against vendors such as landscapers, property management companies and others providing services to the Association for the breach of a contract entered into between the vendor and the Association.

**Section 4.2. Variances.** Notwithstanding anything to the contrary contained in this Declaration, 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 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.

## ARTICLE 5. ASSESSMENTS

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**Section 5.1. Purpose of Assessment.** The assessments provided for herein shall be used for the general purposes of administering and operating the Area of Common Responsibility, promoting the 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 and allowing the Association to fulfill its duties and responsibilities as set forth in Community Instruments.

**Section 5.2. Creation of the Lien and Personal Obligation for Assessments.** Each Owner of any 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; and (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. All such assessments, together with late charges, interest not to exceed the maximum rate permitted by law per annum on the principal amount due, and costs, 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 such assessment, together with late charges, interest, costs, including, without limitation, reasonable attorney's fees actually incurred, shall also be the personal obligation of every Person who is an Owner of the Lot at the time the assessment fell due. Each Owner shall be personally liable for his or her portion of each assessment coming due while he or she is the Owner of a Lot, and his or her grantee 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 a grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings or by deed in lieu of foreclosure.

The Association shall, within five (5) days after receiving a written request therefor and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association certifying the status of assessments on a Lot shall be binding upon the Association as of the date of issuance.

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

**Section 5.3. Computation of Annual Assessment.** It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Community during the coming year, which may include, if necessary, a capital contribution or reserve in accordance with a capital budget separately prepared.

The common assessment to be levied against each Lot for the coming year shall be set at a level which is reasonably expected to produce total revenue to the Association equal to the total budgeted common expenses, including reserves. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Lots subject to assessment on the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year. The Board shall cause the proposed budget and assessments to be levied against each Lot for the following year to be delivered to the members at least thirty (30) days prior to the proposed effective date thereof. The budget and assessment shall become effective unless disapproved at a meeting by a majority of the Total Association Vote. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the or the Board of Directors fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

**Section 5.4. Special Assessments.** In addition to the other assessments authorized herein, the Board may, at any time, levy a special assessment against all Owners to cover unbudgeted expenses or expenses in excess of those budgeted, notice of which shall be sent to all Owners. Until one hundred percent (100%) of the Community has been developed and conveyed to Owners, any such special assessments must be approved by Declarant.

**Section 5.5. Specific Assessments.** The Board of Directors shall have the power to specifically assess specific Lots pursuant to this Section, in its discretion, as 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. Fines levied pursuant to Article 5 of the Bylaws, costs and expenses of self-help pursuant, and the costs of maintenance performed by the Association which the Owner is responsible for under Article 9 shall be specific assessments. The Board may also specifically assess Lots for the following Association expenses, except for expenses incurred for routine maintenance and repair of items that are the maintenance responsibility of the Association:



(a) expenses of the Association which benefit less than all of the Lots in the Community may be specifically assessed equitably among all of the Lots which are benefitted 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 assessed equitably among all Lots according to the benefit received; and

(c) other expenses specifically contemplated as specific assessments in this Declaration.

**Section 5.6. Lien for Assessments.** All assessments levied against any Lot, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, shall be secured by a lien on the Lot in favor of the Association from the time the sums become due and payable. The Association shall have the right, but not the obligation to evidence the existence of the lien by filing a notice of lien in the Official Records. The lien shall be superior to all other liens and encumbrances on the Lot, except for (a) liens for ad valorem taxes; or (b) liens for all sums unpaid on a first Mortgage or on any Mortgage to Declarant or SLV duly recorded in the Official Records and all amounts advanced under the terms of and secured by the Mortgage.

All Persons acquiring liens or encumbrances on any Lot after this Declaration has been recorded, other than as provided above, shall be deemed to consent that their liens or encumbrances shall be inferior to future liens for assessments, whether or not prior consent is specifically set forth in the instruments creating their liens or encumbrances.

**Section 5.7. Effect of Nonpayment of Assessments: Remedies of the Association.** All assessments and related charges not paid on or before the due date shall be delinquent, and the Owner shall be in default, as follows:

(a) If the annual assessments or any part thereof is not paid in full within ten (10) days of the due date or if any other charge is not paid within ten (10) days of the due date, a late charge equal to the greater of Ten Dollars (\$10) or ten percent (10%) of the amount not paid may be imposed without further notice or warning to the delinquent Owner and interest at the rate of ten percent (10%) per annum or such higher rate as may be permitted by the applicable law shall accrue from the due date thereof.

(b) If part payment of assessments and related charges is made, the amount received may be applied first to costs and reasonable attorneys' fees actually incurred, then to late charges, then to interest, then to delinquent assessments, and then to current assessments.

(c) If assessments and other charges or any part thereof remain unpaid more than twenty (20) days after they become delinquent, the Association, acting through the Board, shall send a notice of delinquency to the Owner stating that if the assessment, fine or charge remains delinquent for more than ten (10) days from the date of the notice of delinquency, the Board may institute suit to collect all amounts due pursuant to the provisions of this Declaration, the Bylaws, and Georgia law, including reasonable attorneys' fees actually incurred, and suspend the Owner and/or Occupant's right to vote and/or use the Common Property, including the right to bring or park vehicles on the Common Property or have guests bring or park vehicles on the Common Property. However, the Board may not limit pedestrian, medical, fire, police or other health, safety, service or emergency vehicle ingress or egress to or from the Lot or deny necessary parking of clearly and properly identified handicapped vehicles used by handicapped Owners or Occupants protected by the Fair Housing Amendments Act of 1988. Prior to suspending parking privileges, the Association shall provide the delinquent Owner or Occupant written notice of its intention to do so, sent by certified mail not less than ten (10) days prior to the date of such suspension.

**Section 5.8. Commencement of Assessments.**



(a) Assessments shall commence as to Lots when the Board of Directors first determines a budget and levies assessments. Except as otherwise provided for herein, the assessments provided for herein shall commence as to each individual Lot on the date that such Lot has been improved with a dwelling for which a Certificate of Occupancy has been issued and has been conveyed to an owner who intends to occupy or lease the dwelling, or, if the dwelling is occupied as a residence before such conveyance, the date of such occupancy. 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 being occupied for residential purposes.

(b) Notwithstanding anything to the contrary herein, SLV and Declarant shall not be liable or responsible for the payment of any assessments on the Lots it owns.

**Section 5.9. Initiation Fee.** The purchaser of each Lot at the closing of the sale or resale of a Lot shall pay to the Association an initiation fee in the amount determined by the Board. The initiation fee shall not be deemed an advance payment of regular or special assessments. The Board shall have discretion to increase the initiation fee by resolution of the Board; provided, however, the initiation fee shall not be changed by the Board without Declarant's consent so long as Declarant owns any property in the Community, and without SLV's consent so long as SLV owns any property in the Community. Notwithstanding anything to the contrary herein, the initiation fee shall not be due from: (i) any grantee who is the Domestic Partner, spouse or former spouse of the grantor; (ii) any grantee that is a wholly-owned entity of the grantor; (iii) any grantee to whom a Lot is conveyed by a will or through the law of intestacy; (iv) any grantee of a Lot who obtains title pursuant to judicial or nonjudicial foreclosure (or deed in lieu of foreclosure) of any first Mortgage of record or secondary purchase money Mortgage of record (provided that neither the grantee nor any successor grantee on the Mortgage is the seller of the Lot); (v) Declarant; or (vi) SLV. The initiation fee shall be an assessment, which is the personal obligation of the Owner, and shall constitute a lien, which may be collected as provided in this Article. The initiation fee for the resale of Lots may be less than the initiation fee for the initial sale of a Lot.

**Section 5.10. Statement of Account.** 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 setting forth the amount of assessments due and unpaid, including any late charges, interest, fines, or other charges against a Lot. The Association shall respond in writing within five (5) business days of receipt of the request for a statement; provided, however, the Association may require the payment of a reasonable fee as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Lot as of the date specified therein.

**Section 5.11. Capital Reserve Budget and Contribution.** The Board of Directors shall annually prepare a capital reserve budget which shall take into account the number and nature of replaceable assets, including the roads within the Community which are not otherwise maintained on an ongoing basis by a governmental entity, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital reserve contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital reserve budget, with respect both to amount and timing by equal annual assessments over the period of the budget. The annual capital reserve contribution required, if any, shall be fixed by the Board and included within the budget and assessment as provided in Section 5.3 hereof. A copy of the capital reserve budget shall be distributed to each member in the same manner as the operating budget.

Notwithstanding any other provisions of this Declaration, during the Declarant Control Period, neither Declarant, SLV, nor the directors and officers of the Association shall be required to prepare a capital reserve budget, set any other capital reserve contribution, or otherwise collect amounts for capital reserves.



**Section 5.12. Budget Deficits During Declarant Control.** During the Declarant Control Period, Declarant may, but shall have no obligation to, (a) advance funds to the Association in the form of a loan or gift sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for capital reserves) and the sum of the annual, special and specific assessments collected by the Association in any fiscal year, and such advances, if in the form of a loan, shall be evidenced by a promissory note or notes from the Association in favor of Declarant and shall not be deemed a conflict of interest by the directors and officers appointed by Declarant, provided, however, the failure to execute a note shall in no way diminish or eliminate the obligation of the Association to repay to the Declarant all sums which the Declarant has loaned the Association, or (b) cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for such a loan in the local area of the Community. 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.

## **ARTICLE 6. ARCHITECTURAL STANDARDS**

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**Section 6.1. General.** No structure, including, but not limited to, a residence, exterior animal containment facility, outbuilding (including, but not limited to, structures of temporary character, trailer, tent, shack, barn), guest cottage, detached garage, carport, playhouse or play equipment, fence, wall or swimming pool shall be placed, erected, installed, or maintained upon any Lot, and no construction or modification (which shall include staking, clearing, excavation, grading and other site work, exterior alteration or modification of existing improvements, and planting or removal of plants, trees, or shrubs other than as may be permitted in Articles 7, 8 and 9 and excluding the replacement of annual or perennial flowers in pre-approved planting beds and the replacement of dead or diseased trees or shrubs with like plant material) shall take place except in strict compliance with this Article and until complete final plans and specifications for the proposed construction and/or modification showing the nature, kind, shape, height, materials, basic exterior finishes and colors, location and floor plan have been submitted to and approved by the ARC. For the purposes of this Section, a change in the paint color of a residence or other exterior redecorating shall be considered an exterior alteration. Notwithstanding the foregoing, nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of a residence located on a Lot, or to paint the interior of his residence any color desired; provided, however, modifications or alterations to the interior of screened porches, patios, and any other portion of a residence visible from outside the Lot shall be subject to approval of the ARC and the architectural standards and requirement to obtain approval of the ARC shall not apply to the interior finishes in any single family residence constructed on a Lot. This Article shall not apply to the activities of the Declarant or Owner, or their affiliates or to improvements to the Common Property made by or on behalf of the Association. This Article may not be amended without the written consent of the Declarant and SLV until: (a) Declarant no longer owns any property in the Community and no longer has the right to unilaterally annex additional property to the Community; (b) SLV no longer owns any property in the Community and no longer has the right to unilaterally annex additional property to the Community; and (c) each Lot has been improved with a dwelling for which a certificate of occupancy has been issued.

All residences constructed on any portion of the Community shall be built in accordance with the plans and specifications submitted by an Owner, and which plans and specifications have been approved by the ARC.

Until one hundred percent (100%) of the Community has been developed and conveyed to purchasers other than Declarant in the normal course of development and sale, Declarant's right to submit Additional Property has expired, Declarant shall have the right to appoint all members of the Architectural Review Committee. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant or SLV (while it is the owner of any Lot in the Community) and recorded in the Official Records. After Declarant's right to appoint has expired, the Board of Directors shall



appoint the members of the Architectural Review Committee, or may adopt a resolution making the Board of Directors the Architectural Review Committee. The Board may employ for the ARC architects, engineers, or other Persons necessary to enable the ARC to perform its review. The Architectural Review Committee may, from time to time, delegate any of its rights or responsibilities hereunder to one (1) or more duly licensed architects or other qualified Persons, who shall have full authority to act on behalf of the ARC for all matters delegated. A review fee in a reasonable amount may be charged.

The primary purpose of these architectural requirements is to protect and preserve property values in the Community by maintaining architectural and aesthetic harmony and compatibility among the Lots and the structures on the Lots in the Community. The architectural requirements and standards may be designed and applied to reflect that Lots within the Community are of varying sizes, topographies and locations, and that improvements and modifications suitable for one Lot may be inappropriate for another Lot. Therefore, the Architectural Review Committee is authorized to apply or adopt different standards for different Lots to reflect the varying sizes and layouts of Lots within the Community. Specifically, the ARC may, for example, allow an improvement, modification or change which cannot be seen from any street or other Lot within the Community at any time during the year, including winter, but prohibit the same change if it can be seen from any street or other Lot within the Community.

**Section 6.2. Guidelines and Procedures.** Declarant may prepare the initial design and development guidelines and application and review procedures (the "Design Guidelines") that shall be applicable to all construction activities within the Community. The Design Guidelines may contain general provisions applicable to all of the Community, as well as specific provisions which vary from one portion of the Community to another depending upon the location, unique characteristics, and intended use.

The Architectural Review Committee shall have sole and full authority to adopt and amend the Design Guidelines from time to time, without the consent of the Owners. The Architectural Review Committee shall make the Design Guidelines, if any, available to Owners, and all such Persons shall conduct their activities in strict accordance with such Design Guidelines. In the discretion of the Architectural Review Committee, such Design Guidelines may be recorded in the Official Records, in which event the recorded version, as it may unilaterally be amended from time to time by the Architectural Review Committee by recordation of amendments thereto, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

Any amendments to the Design Guidelines adopted from time to time by the Architectural Review Committee in accordance with this Section shall apply to construction and modifications approved after the date of such amendment only, and shall not apply to plans or specifications previously approved or require modifications to or removal of structures previously approved by the Architectural Review Committee.

In the event that the Architectural Review Committee fails to approve or to disapprove any application within thirty (30) days after submission in writing to, and actual receipt by, the Architectural Review Committee of all information and materials reasonably requested, the application shall be deemed approved. However no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the Architectural Review Committee pursuant to Section 6.6 below.

The Architectural Review Committee shall be the only judge of the plans with regard to the requirements of this Article and may withhold approval for any reason, including purely aesthetic considerations. The Architectural Review Committee shall be entitled to stop any construction in violation of these restrictions. Any member of the Board or its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property to inspect for the purpose of ascertaining whether or not these restrictive covenants have been or are being complied with. Such Person or Persons shall not be deemed guilty of trespass by reason of such entry. If an Owner does not comply with this





Section, the Board may record in the Official Records a notice of violation naming the violating Owner in addition to any other available remedies.

**Section 6.3. DISCLAIMER.** THE ARCHITECTURAL REVIEW COMMITTEE AND THE BOARD OF DIRECTORS DO NOT WARRANT OR REPRESENT, THAT THEIR DECISIONS UNDER THIS ARTICLE CONSTITUTE, AND THEIR DECISIONS SHALL NOT BE INTERPRETED AS CONSTITUTING, AN APPROVAL AS TO COMPLIANCE WITH ANY BUILDING CODE, REGULATION OR ORDINANCE, OR ANY OTHER CODE, REGULATION, ORDINANCE OR LAW. NEITHER DECLARANT, SLV, THE BOARD OF DIRECTORS NOR THE ARC SHALL BEAR ANY RESPONSIBILITY FOR ENSURING THE STRUCTURAL INTEGRITY OR SOUNDNESS OF APPROVED CONSTRUCTION OR MODIFICATIONS, OR FOR ENSURING COMPLIANCE WITH BUILDING CODES AND OTHER GOVERNMENTAL REQUIREMENTS. NEITHER DECLARANT, SLV, THE ASSOCIATION, THE BOARD OF DIRECTORS, THE ARC NOR MEMBER OF ANY OF THE FOREGOING SHALL BE HELD LIABLE FOR ANY INJURY, DAMAGES OR LOSS ARISING OUT OF THE MANNER OR QUALITY OF APPROVED CONSTRUCTION OR MODIFICATIONS TO ANY LOT.

**Section 6.4. No Waiver.** The approval of the Architectural Review Committee of any proposals, plans and specifications, or drawings, shall not constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or other matters later submitted for approval or consent.

**Section 6.5. No Waiver of Future Approvals.** The approval of either the ARC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters subsequently or additionally submitted for approval or consent.

**Section 6.6. Variance.** The ARC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall: (a) be effective unless in writing; (b) be contrary to the restrictions set forth in this Declaration; or (c) estop the ARC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

**Section 6.7. Enforcement.** Any construction, alteration, or other work done in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board or Declarant, Owners shall, at their own cost and expense, remove such construction, alteration, or other work and shall restore the land to substantially the same condition as existed prior to the construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the Board or its designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as existed prior to the construction, alteration or other work. All costs, fines, together with the interest at the maximum rate then allowed by law, may be assessed against the benefitted Lot and collected as a specific assessment pursuant to Section 5.5 hereof.

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded by the Board from the Community, subject to the notice and hearing procedures contained in the Bylaws. In such event, neither the Association, its officers, nor directors shall be held liable to any Person for exercising the rights granted by this Section.



In addition to the foregoing, the Board of Directors shall have the authority and standing, on behalf of the Association, to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the ARC.

**Section 6.8. Commencement of Construction.** All changes, modifications and improvements approved by the ARC, must be commenced within one (1) year from the date of approval. If not commenced within one (1) year from the date of such approval, then such approval shall be deemed revoked by the ARC, unless the ARC gives a written extension for commencing the work. Except for the new construction (or reconstruction after a major casualty) of a residence and related improvements on a Lot which shall be completed in its entirety using best reasonable efforts within a time period established by the ARC, all work approved by the ARC shall be completed in its entirety within ninety (90) days from the date of commencement, unless otherwise agreed in writing by the ARC. All approved changes, modifications, and improvements must be completed in their entirety. An Owner may not construct only a portion or part of an approved change, modification, or improvement. Notwithstanding anything to the contrary stated herein or the Design Guidelines, no changes, modifications, and improvements approved by the ARC shall be commenced until the Owner conspicuously posts an approval permit and such permit shall remain conspicuously until all construction activities are completed. Said approval permit shall serve only to provide notice to the Community that the change, modification, and/or improvement being made to a Lot has been approved by the ARC, and shall be in addition to, and not in lieu of, all necessary permits or approvals required by Gwinnett County or other governmental authorities.

## **ARTICLE 7. USE RESTRICTIONS AND RULES**

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**Section 7.1. General.** This Article, beginning at Section 7.2, sets out certain use restrictions that must be complied with by all Owners and Occupants of Lots. These use restrictions may only be amended in the manner provided in Section 15.4 hereof, regarding amendment of this Declaration. In addition, the Board may, from time to time, without consent of the Owners, adopt, modify, or delete rules and regulations applicable to the Community. These rules shall be distributed to all Owners prior to the date that they are to become effective and after distribution shall be binding upon all Owners and Occupants of Lots until and unless overruled, canceled, or modified in a regular or special meeting by a Majority of the Total Association Vote, the consent of Declarant (so long as Declarant owns any Lot for development or sale), and the consent of SLV (so long as SLV owns any Lot for development or sale). Notwithstanding the above, so long as Declarant or SLV own any Lot for development or sale, no rules and regulations which affect Declarant or SLV, may be adopted, modified, or deleted without the written consent of the affected Declarant or SLV.

**Section 7.2. Residential Use.** Except as otherwise expressly permitted in this Declaration, each Lot shall be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Lot or any part of the Community, including business uses ancillary to a primary residential use, except that the Owner or Occupant residing in a Lot may conduct such ancillary business activities within the residence 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 Persons coming onto the Community who do not reside in the Community or door to door solicitation of residents of the Community (other than deliveries by couriers, express mail carriers, parcel delivery services and other such similar delivery services); (c) the business activity conforms to all zoning requirements for the Community; (d) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage; (e) 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 of Directors; and (f) the business activity does not result in a materially greater use of the Common Property facilities or Association services.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity



undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) the activity is engaged in full or part time; (ii) the activity is intended to or does generate a profit; or (iii) a license is required for the activity. Notwithstanding the above, the use of a Lot by an onsite management company operating on behalf of the Association shall not be considered a trade or business within the meaning of this Section.

**Section 7.3. Number of Occupants.** The maximum number of occupants in a dwelling within the Community shall be limited to two (2) people per bedroom. "Occupancy," for purposes hereof, shall be defined as staying overnight in a dwelling within the Community for a total of more than thirty (30) days, either consecutive or non-consecutive, in any one year period. Upon written application, the Board shall grant variances to this restriction to comply with provisions of the Fair Housing Acts or any amendments thereto.

If an Owner of a Lot is a corporation, partnership, trust, or other legal entity not being a natural person, the entity shall give prior notice to the Board of any guests of the entity who will be utilizing the entity's dwelling by designating in writing to the Board the name(s) of the person(s) who will utilize the dwelling. The designated person(s) to occupy the dwelling may not be changed more frequently than once every six (6) months.

**Section 7.4. Leasing.** "Leasing" for the purposes of this Section, is defined as regular, exclusive occupancy of a Lot by any Person other than the Owner. Occupancy by a roommate of an Owner shall not constitute "leasing." Leasing which is authorized, pursuant to permit, hereunder shall be governed by the following provisions:

(a) **General.** Lots may be leased only in their entirety; no fraction or portion of a Lot or Lots may be leased without prior written Board approval. All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. The Board may maintain and, upon request, provide a form which is deemed acceptable. There shall be no subleasing of Lots or assignment of leases without prior written Board approval. All leases must be for an initial term of not less than one (1) year, except with written Board approval, which shall not be unreasonably withheld in cases of undue hardship. Within ten (10) days after executing a lease agreement for the lease of a Lot, the Owner shall provide the Board with a copy of the lease and the name of the lessee and all other people occupying the Lot. The Owner must provide at Owner's sole expense the lessee copies of the Declaration, Bylaws, and the Association's rules and regulations. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed lessee; the Board's approval or disapproval shall be limited to the form of the proposed lease.

In order to preserve the character of the Community as predominantly owner-occupied, the leasing of Lots shall be governed by the restrictions imposed by this Section. Except as provided herein, the leasing of Lots shall be prohibited. Owners desiring to lease their Lots may do so only if they have applied for and received from the Board of Directors a "Leasing Permit" with respect to their Lot. Such a permit, upon its issuance, will allow an Owner to lease the Lot provided that such Leasing is in strict accordance with the terms of the permit and this Section. The Board of Directors shall have the authority to establish conditions as to the duration and use of such permits consistent with this Section.

(b) **Notice.** At least seven (7) days prior to entering into the lease of a Lot, the Owner shall provide the Board with a copy of the proposed lease agreement. The Board shall approve or disapprove the form of said lease. In the event a lease is disapproved, the Board shall notify the Owner of the requisite action to be taken in order to bring the lease in compliance with the Declaration and any rules and regulations adopted pursuant thereto.



(c) Leasing Permits. An Owner's request for a Leasing Permit shall be approved if current, outstanding Leasing Permits have not been issued for more than ten percent (10%) of the total number of Lots (excluding Lots owned by Declarant) in the Community. A Leasing Permit shall be automatically revoked upon the happening of any of the following events: (A) the failure of an Owner to lease his or her Lot within one hundred eighty (180) days of the Leasing Permit having been issued; (B) the failure of an Owner to have his or her Lot leased for any consecutive one hundred eighty (180) day period thereafter; or (C) the occurrence of the date referenced in a written notification by the Owner to the Association that the Owner will, as of said date, no longer need the Leasing Permit. If current Leasing Permits have been issued for ten (10%) of the total number of Lots (excluding Lots owned by Declarant), no additional Leasing Permits shall be issued until the number of outstanding current Leasing Permits falls below ten percent (10%) of the total number of Lots (excluding Lots owned by Declarant) in the Community. Owners who have been denied a Leasing Permit shall automatically be placed on a waiting list for a Leasing Permit and shall be issued the same if they so desire when the number of current outstanding Leasing Permits issued falls to ten percent (10%) or less of the total number of Lots (excluding Lots owned by Declarant) in the Community.

(d) Compliance With Declaration, Bylaws, and Rules and Regulations, Use of Common Property, and Liability for Assessments. Each Owner and each lessee, by occupancy of a Lot, covenants and agrees that any lease for 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 residence, agrees to the applicability of this covenant and incorporation of the following language into the lease:

(i) Compliance With Declaration, Bylaws, and Rules and Regulations. The lessee shall comply with all provisions of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto and shall control the conduct of all other Occupants and guests of the leased Lot in order to ensure such compliance. The Owner shall cause all Occupants of his or her Lot to comply with the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations by such Occupants, notwithstanding the fact that such Occupants of the Lot are fully liable and may be sanctioned for any such violation. If the lessee, or a person living with the lessee, violates the Declaration, Bylaws, or a rule or regulation 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 Bylaws. If the fine is not paid by the lessee within the time period set by the Board, the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Lot.

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

(ii) 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 but not limited to, the use of any and all recreational facilities and other amenities.



(iii) Liability for Assessments. When an Owner who is leasing his or her Lot fails to pay any annual or special assessment or any other charge 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, lessee shall pay to the Association all unpaid annual and special 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'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'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.

(e) Applicability of this Section. Notwithstanding the above, this Section shall not apply to any leasing transaction entered into by Declarant, the Association, or 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. Such parties shall be permitted to lease the Lot without first obtaining a permit in accordance with this Section, and such Lots shall not be considered as being leased in determining the maximum number of Lots that may be leased in accordance with this Section.

**Section 7.5. Occupants Bound.** All provisions of the Declaration, Bylaws, and of any rules and regulations, use restrictions or Design Guidelines adopted pursuant to the Declaration which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants of Lots and guests and invitees of Occupants or Owners. The Owner shall be responsible for insuring that the Occupant, and the guests, invitees and licensees of the Owner or the Occupant strictly comply with all provisions of the Declaration, Bylaws, and any rules and regulations adopted by the Board of Directors. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not paid timely, the fine may then be levied against the Owner.

**Section 7.6. Vehicles.** The term "vehicles," as used in this provision, shall include without limitation, motor homes, boats, trailers, motorcycles, mini-bikes, scooters, go-carts, trucks, campers, buses, vans, golf carts and automobiles. All vehicles shall be parked within garages, on driveways, or on other paved parking areas in the Community designated by the Board as parking areas for vehicles. Parking in yards is prohibited. No vehicle may be left upon any portion of the Community, except in a garage or other area designated by the Board, for a period longer than five (5) days if it is unlicensed or if it is in a condition so that it cannot operate on public streets. After the five (5) day period, the unlicensed or inoperable vehicle shall be considered a nuisance and may be removed from the Community. No boat, trailer, bus, recreational vehicle, mobile home, truck with mounted camper, other campers, disabled vehicle, stored vehicle, or towed vehicle, shall be kept or stored on any portion of the Community including on a driveway for more than twenty-four (24) consecutive hours or more than forty-six (46) hours in any seventy-two (72) hour period, except in a garage or screened area approved by the ARC. Vehicles parked in violation of this provision shall be considered a nuisance and may be removed from the Community. No eighteen-wheel trucks or the cabs of these trucks or commercial trucks with a load capacity in excess of one ton shall be parked, kept, or stored within the Community, and if so parked, kept, or stored shall be considered a nuisance and may be removed from the Community. However, moving vans or service or delivery vehicles may be parked temporarily in the Community for such period of time as is reasonably necessary to provide each service, but no such vehicle shall remain parked overnight without prior written Board consent.

**Section 7.7. Traffic Regulations.** All vehicular traffic on any streets or alleys in the Community shall be subject to the provisions of the state and local laws concerning operation of motor



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

**Section 7.8. Animals and Pets.** No animals, livestock or poultry of any kind may be raised, bred, kept, or permitted on any portion of the Community, with the exception of dogs, cats, or other generally recognized common household pets in a reasonable number, as determined in the sole discretion of the Board of Directors. Pets shall not be allowed to roam free within the Community or on a Lot. Dogs must be kept on a leash and be under the physical control of a responsible Person at all times while on the Common Property; provided, however, dogs need not be leashed within fenced or secured area. All Owners and Occupants keeping pets within the Community shall comply with all applicable governmental ordinances and regulations.

No potbellied pigs or horses may be brought onto or kept on the Community at any time. In addition, other animals determined in the Board's sole discretion to be dangerous shall not be brought onto or kept in the Community at any time. The Board may require that an Owner: (a) remove any animal from the Property that, in the sole discretion of the Board of Directors, presents an actual threat to the health and safety of residents; and (b) abate any nuisance or unreasonable source of annoyance involving an animal being kept on an Owner's Lot. In the event that an Owner fails to remove an animal or abate a nuisance or unreasonable annoyance involving the animal as provided herein, the Board shall have the right to institute legal action to have the animal removed from the Property and all costs associated therewith shall be a specific assessment against the Lot of such Owner.

Without prejudice to the Board's right to remove any animals, the Board may prohibit a household pet that has caused damage or injury from being walked in the Community. Animal control authorities shall be permitted to enter the Community to patrol and remove pets that are not being kept in accordance with applicable local laws. Pets shall be registered, licensed, and inoculated as required by law.

Any Owner or Occupant who keeps or maintains any pet shall be deemed to have agreed to indemnify and hold Declarant, SLV, the Association, its directors, officers, and agents free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the Community.

**Section 7.9. Signs.** Except as may be provided for herein or as may be required by legal proceedings, and except for signs which may be erected by Declarant related to the development and sale of Lots, no signs, advertising posters, "For Sale," "For Rent" and other similar signs, flyers, political placards or billboards of any kind shall be erected or placed by an Owner, Occupant or other Person, or permitted to remain on the Community without the prior written consent of the Board or its designee, except that one (1) professional security sign not to exceed four inches (4") by four inches (4") in size may be displayed from within a Lot and one (1) professionally lettered "For Sale" sign not to exceed two feet (2') by two feet (2') in size may be displayed from within the Lot offered for sale. No advertising, directional, or vendor signs shall be permitted within the Community except as authorized by Declarant under Article 13 of this Declaration. The Board shall have the right to erect reasonable and appropriate signs on behalf of the Association. The Board shall also have the authority to adopt regulations permitting temporary signs on Lots announcing birthdays, graduations or other events for limited periods of time.



**Section 7.10. Antennas and Satellite Dishes.** Except as provided below and as provided for in the Design Guidelines, no satellite dish, antenna, or other device for the transmission or reception of television signals, radio signals, or any form of electromagnetic wave or radiation shall be erected, used, or maintained on any portion of the Community; provided, however, that the Association shall have the right to erect, construct, and maintain such devices. The following shall apply to all Owners:

(a) No transmission antenna of any kind may be erected anywhere on the Community without written approval of the Board of Directors or the ARC.

(b) No direct broadcast satellite (DBS) antenna or multi-channel multi-point distribution service (MMDS) antenna larger than one meter in diameter shall be placed, allowed, or maintained upon the Community.

(c) DBS and MMDS satellite dishes or antennas one meter or less in diameter and television broadcast service antennas may be installed only in accordance with Federal Communication Commission (FCC) rules and the rules and regulations of the Association, both as may be amended from time to time.

In the event of a transfer of a Lot that includes the satellite dish or antenna, the Grantee shall assume all responsibility for the satellite dish or antenna and shall comply with this Declaration, the Bylaws, and the rules and regulations regarding satellite dishes and antennas, including, but not limited to, those requirements relating to maintenance and removal of satellite dish or antenna.

**Section 7.11. Firearms and Fireworks.** The use, display, or discharge of firearms or fireworks on any portion of the Community is prohibited except with prior approval of the Association; provided, however, that the display of lawful firearms in the Community is permitted by law enforcement officers and also is permitted for the limited purpose of transporting the firearms across the Common Property to or from the Owner's Lot. The term "firearms" includes "B B" guns, pellet guns, and other firearms of all types, regardless of size. The term "fireworks" shall include those items as listed in O.C.G.A. §25-10-1, as amended.

**Section 7.12. Garbage, Rubbish, Trash and Recyclables.** All rubbish, trash, garbage and recyclables shall be regularly removed from a Lot and shall not be allowed to accumulate therein. Garbage and recycling receptacles for individual Lots shall be screened or concealed from view of neighboring Lots and the street on which the Lot fronts except on the day of garbage or receptacle pick-up in which event the containers may be left at the curb for a period not to exceed twenty-four (24) consecutive hours. No garbage, trash or recyclables shall be placed on the Common Property, temporarily or otherwise, except in sealed bags placed in trash cans or proper receptacles designated by the Board for collection, if any. The above provisions in this Section are not applicable to construction debris, rubbish, trash, and garbage of the Declarant or its affiliates; provided, however, all such construction debris, rubbish, trash, and garbage shall be regularly removed and shall not be allowed to unreasonably accumulate. The Association may, but shall not be required to, contract with private trash and recycling collection companies to pick up all usual and customary household trash and recyclables on a regular basis.

**Section 7.13. Clotheslines, Garbage Cans, Woodpiles, Recreational and Other Equipment.** All clotheslines, garbage cans, recycling containers, woodpiles, and related equipment and other similar items shall be located or screened so as to be concealed from view from any street or road. All construction debris, rubbish, trash, recyclables, and garbage shall be regularly removed and shall not be allowed to accumulate.

**Section 7.14. Fences.** Other than fences constructed as part of the initial approved construction of the improvements on a Lot by Declarant, no fence, fencing type barrier of any kind including fencing enclosures for pets shall be placed, erected, allowed, or maintained upon any portion of the Community



without the prior written consent of the ARC, with the exception that underground electronic fencing shall be allowed. Subject to the prior written consent of the ARC, wood privacy fences and decorative iron/iron-look fences are allowed in all areas of the Community, including, but not limited to, along the boundary line between a Lot and the Common Property. Notwithstanding the above, no Owner shall erect or place any fence on or along a common property line, where such property line abuts Common Property, except with the prior written consent of the ARC or as installed by Declarant. No chain link or wire fence shall be erected on any portion of a Lot. All fencing within the Community shall be six (6) feet in height from grade.

**Section 7.15. Air Conditioning Units.** No window air conditioning units may be installed on any Lot. Condensing units for air conditioners shall only be located in the rear or along the side of a dwelling.

**Section 7.16. Artificial Vegetation, Exterior Sculpture, and Similar Items.** No artificial vegetation shall be permitted on the exterior of any property within the Community. Exterior sculptures, benches, fountains, flags, and similar items may not be placed in the front yard of a Lot or on the front exterior of a dwelling without the prior written approval of the ARC.

**Section 7.17. National Flags.** Notwithstanding anything to the contrary herein, an Owner may display one (1) national flag of the United States not exceeding twelve (12) square feet in size on a flag holder attached to the façade of a home on a Lot. No flag shall be displayed in a manner inconsistent with any provision of the Freedom to Display the American Flag Act of 2005, or any applicable law. By taking title to a Lot, all Owners agree and acknowledge that the Board, on behalf of the Association, has a substantial interest in protecting the aesthetic appearance of the Community and therefore may adopt additional reasonable restrictions pertaining to the time, place, or manner of displaying the flag of the United States.

**Section 7.18. Nuisance.** It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on and in his or her Lot. No property within the Community shall be used, in whole or in part, for the storage of any property or thing that will cause a 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 that will discharge 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 within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any property within the Community. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community. Without limiting the generality of the foregoing, no horn, whistle, siren, bell, amplifier, or other sound device, except for 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. However, any siren or device for security purposes shall contain a device that causes it to automatically shut off within fifteen (15) minutes.

**Section 7.19. Unsightly or Unkempt Conditions.** The pursuit of hobbies or other activities which might tend to cause disorderly, unsightly, or unkempt conditions, including without limitation, the assembly and disassembly of motor vehicles, boats and other mechanical devices, shall not be pursued or undertaken in any part of the Community except within closed garages.

**Section 7.20. Abandoned Personal Property.** Personal property, except for personal property owned by the Association, is strictly prohibited from being stored, kept, or allowed to remain for a period of more than twenty four (24) hours upon any portion of the Common Property, Area of Common Responsibility, or on the rights-of-way located within the Community. If the Board or its designee, in its sole discretion, determines that property is kept, stored, or allowed to remain on the Common Property, Area of Common Responsibility, or on the rights-of-way located within the Community in violation of this Section, then the Board may remove and either discard or store the personal property in a location which the Board may determine. If personal property is removed in accordance with this Section, neither the Association nor





any officer or agent of the Association shall be liable to any Person for any claim of damage resulting from the removal activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to remove abandoned or improperly stored personal property, as set forth herein.

**Section 7.21. Tree Removal.** No trees located on a Lot having a diameter of six (6) inches or more (measured from a point two (2) feet above ground level) and a height of more than ten (10) feet above the ground shall be removed without the prior written consent of the ARC, except for (a) diseased or dead trees; (b) trees needing to be removed to promote the growth of other trees or for safety reasons; (c) trees the main trunk of which are within ten (10) feet of the residence, driveway, or walkways constructed or to be constructed on a Lot. Owners acknowledge that there may also be laws restricting tree removal contained in Gwinnett County ordinances; in the event of any conflict between such laws and ordinances and this Declaration, the more restrictive provisions shall apply. Owner shall provide the Board with documentation explaining why a tree meeting requirements (a) or (b) needs to be removed (such as a letter from an arborist) prior to removing such tree. This provision shall not apply to the removal of trees by the Declarant or the Association.

**Section 7.22. Drainage.** Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, storm drains or by installation of fencing. Declarant hereby reserves a perpetual easement across all Community property for the purpose of altering drainage and water flow. Rights exercised pursuant to this reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

**Section 7.23. Sight Distance at Intersections.** All property located at street intersections and at the intersections of streets and driveways shall be landscaped so as to permit safe sight across the corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

**Section 7.24. Boundary Line Changes.** Boundaries lines between adjoining Lots may be relocated with the consent of the Owners of the affected Lots, provided any such relocation does not violate applicable subdivision and/or zoning regulations.

**Section 7.25. Subdivision of Lots.**

(a) No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Board or its designee. However, (a) Declarant hereby expressly reserve the right to subdivide, combine and/or replat any Lot or Lots owned by Declarant. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations.

(b) Subject to the prior approval of Declarant (so long as Declarant owns any property in the Community) or the Board of Directors (after Declarant does not own any property in the Community), an Owner may combine two (2) or more Lots into one (1) Lot. Any such combination shall not be in violation of the applicable subdivision and/or zoning regulations. The Owner of the combined Lot shall have one (1) vote and shall be obligated to pay assessments as the Owner of one (1) Lot.

**Section 7.26. Outbuildings.** No structure of a temporary character, trailer, tent, shack, carport, storage structure, garage, barn, or other outbuilding shall be placed, erected, allowed or maintained by any Owner or Occupant on any portion of the Community, other than by Declarant or SLV, so long as Declarant or SLV own any property in the Community, at any time, either temporarily or permanently, without the written approval of the Board. Any sheds, tool storage areas, workshops or outbuildings approved by the



Board must be consistent in design materials and color with the dwelling on the Lot. Each Lot shall be restricted to only one (1) outbuilding. No metal buildings will be allowed in the Community. In no event shall any trailers, campers, vehicles, shacks, tents, any garages (attached and detached), barns or other structures be used as a residence or living space in any manner whatsoever, either temporarily or permanently, within the Community, without the prior approval of the Board. Specifically, no garage, including, but not limited to, attached and detached garages, shall be utilized in any manner whatsoever as an additional living space or residence. However, this Section shall not be construed to prevent Declarant and SLV and those engaged in development, construction, marketing, property management or sales 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 within the Community.

**Section 7.27. Swimming Pools.** No above-ground swimming pool shall be erected, constructed, or installed on any Lot. No in-ground swimming pool or spa shall be erected, constructed or installed on any Lot unless its design, location and placement are approved by the ARC, Declarant and Board approval.

**Section 7.28. Mailboxes.** The Community will contain a central mailbox area and/or mailbox kiosk area as determined by the Board or as installed by Declarant, and maintained by the Association.

**Section 7.29. Recreational Equipment.** No recreational or playground equipment including, but not limited to, swing sets, jungle gyms, play houses, trampolines, tennis courts, and basketball goals, shall be erected, constructed, or installed on any Lot unless its location, design, and type are approved by the ARC.

**Section 7.30. Window Treatments.** All window treatments visible from the exterior of the front of the dwelling on a Lot shall have window treatments that shall either be wooden blinds, or shall be white, off-white or another color approved in writing by the ARC. In no event should bed sheets, paper or foil be used as window treatments.

**Section 7.31. Garages.** Garage doors shall remain closed at all times, except during times of entry and exit from the garage, or when someone is working or playing in or around the garage. Each Lot with a completed residential structure shall contain an enclosed garage capable of parking at least two (2) motor vehicles. Garages shall be maintained at all times in a manner capable of parking at least two (2) motor vehicles and shall not be converted to another use other than primarily for parking motor vehicles.

**Section 7.32. Garage Sale.** No garage sale, yard sale, flea market or similar activity shall be conducted in the Community without the prior written consent of the Board. Any such activities that have been permitted by the Board shall be subject to all reasonable conditions imposed by the Board.

**Section 7.33. Lighting.** Except as may be permitted by the ARC, exterior lighting and decorations visible from the street shall not be permitted except for (a) approved lighting as originally installed on a Lot; (b) street lights in conformity with an established street lighting program for the Community; or (c) reasonable seasonal decorative lights displayed during the normal and customary season(s).

**Section 7.34. Use of Common Property.** There shall be no obstruction of the Common Property, nor shall anything be kept on, parked on, stored on, or removed from any part of the Common Property without the prior written consent of the Board, except as specifically provided herein. There shall be no landscaping on the Common Property by Owners or Occupants without the prior written consent of the Board. This Section shall not apply to Declarant so long as Declarant owns any property in the Community, or to SLV so long as SLV owns any property in the Community.



**Section 7.35. Sidewalks.** Other than sidewalks and walkways constructed in the Community by the Declarant, all sidewalks and walkways are subject to approval or disapproval under Article 6 herein.

**Section 7.36. Erosion Control and Contamination.** No activity which may create erosion or siltation problems in the Community shall be undertaken on any Lot without the prior written approval of the ARC or its designee, of plans and specifications for the prevention and control of such erosion or siltation. Such plans and specifications shall be designed by a professional engineer licensed in the State of Georgia and all costs and expenses related thereto shall be borne exclusively by the Owner of such Lot. The ARC or its designee may, as a condition of approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include, by way of example and not of limitation, physical devices for controlling the run-off and drainage of water, special precautions in grading, clean-up activities and requiring landscaping as provided for herein. No activity which results in contamination of or any damage to any pond, lake, stream, water course or any other Lot shall be conducted on any Lot, and each Owner shall be liable for all resulting damages from such activity and for restoration of a property damaged from contamination resulting from or attributable to such activity. In addition, prior to commencing any improvements on a Lot, the Owner of such Lot and any builders, subcontractors, or other agents of such Owner, shall fulfill their obligations to comply with the requirements of the State of Georgia Department of Natural Resources, Environmental Protection Division or any other governmental agency having jurisdiction thereof.

**Section 7.37. Buffer and Improvement Setbacks.** The Community may contain various setbacks, buffers and restricted areas, including, but not limited to, impervious setbacks, stream buffers, stream buffer easements, nondisturbed state waters buffer, landscape buffers, no access easements, and/or undisturbed buffer areas, or similarly named areas, as may be shown on the recorded subdivision plat(s) for the Community or identified as zoning conditions affecting the Property. The stream buffer requirement is a requirement of state law in Georgia. Among the applicable buffers, there shall be a twenty-five foot (25') buffer on Lots abutting property zoned R-100. Except for fencing along the edge of a buffer, any buffer areas shall exist as undisturbed natural buffer areas of existing vegetation. Owners shall not disturb any undisturbed buffer areas in any way, including, without limitation, the construction of any improvements in the undisturbed buffer, landscaping, or cutting of trees, bushes or other vegetation. No improvements may be erected within any impervious setback area. Owners are not allowed to maintain or trim the vegetation in any undisturbed buffer or impervious setback areas. The Association is allowed to maintain and trim the vegetation in any undisturbed buffer or impervious setback areas at the direction of the Board, but only in accordance with all applicable zoning and code requirements.

**Section 7.38. Lot Coverage and Improvement Setbacks.** The Community contains building set back lines (including, but not limited to, zoning setbacks) and is subject to a maximum lot coverage restriction as shown on the recorded subdivision plat(s) for the Community. Except as may be allowed under all applicable zoning and code requirements, Owners shall not construct any improvements encroaching on the building set back lines or in excess of the maximum lot coverage.

**Section 7.39. Detention Ponds.** Except as herein provided, all storm water retention or detention ponds within the Community shall be used for aesthetic amenities and storm water drainage only, no other use thereof, including, without limitation, swimming, ice skating, playing, or use of personal flotation devices, and other recreation, shall be permitted, without the written consent of the Board of Directors. The Association, SLV, 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 storm water retention or detention ponds or other areas of water within the Community. No Owner shall have any right to place rocks, stones, trash, garbage, sewage, waste water, rubbish, debris, ashes or other refuse in any storm water retention or detention ponds within the Community, or any other Common Property. Applicable governmental agencies, the Declarant, SLV, and the Association, shall have the sole right to control the water level of all other bodies of water located within the Community and to control the growth and eradication of plants, fowls, reptiles, animals, fish and fungi in and around any storm water retention or detention ponds within the Community.



Owners shall have no riparian or littoral rights with respect to the waters in any storm water retention or detention pond within the Community and shall not be permitted to withdraw water from any storm water retention or detention pond as may exist in the Community without the prior written consent of the Board of Directors.

**Section 7.40. Address Markers.** All address markers and/or address posts shall be of the same type and color as originally installed on a Lot and any modification to or change in address markers and/or address posts shall require the prior written approval of the Architectural Review Committee pursuant to Article 6 hereof.

## **ARTICLE 8. COVENANTS TO ENCOURAGE SUSTAINABLE LIVING**

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**Section 8.1. Solar Panels.** Notwithstanding any provision to the contrary contained herein, Owners shall be permitted to install solar panels on portions of the roof of the dwelling on the Lot sloping towards the rear of the Lot, provided that solar panels are not visible from the front of the Lot and are maintained in a neat and attractive condition.

**Section 8.2. Compost Piles.** Notwithstanding any provision to the contrary contained herein, Owners shall be permitted to keep a compost pile in the rear of the Owner's Lot without approval of the ARC provided that:

- (a) the compost is fully enclosed in an impervious container that is not accessible to animals or rodents; and
- (b) the compost pile is not any closer than twenty-five (25) feet to a side or rear property line of a Lot and within the sidelines of the residence on the Lot.

**Section 8.3. Vegetable Gardens.** Notwithstanding any provisions to the contrary contained herein, Owners shall be permitted to have a vegetable garden in the rear of the Owner's Lot with prior approval of the ARC, provided that:

- (a) the vegetable garden is planted in a raised bed enclosed by treated wooden boards that are at least 1" in width and at least 8" high when measured from grade;
- (b) only vegetables, fruit or herbs are grown in the vegetable garden;
- (c) the vegetable garden is weeded, vines are staked and no plants in the vegetable garden are permitted to grow outside of the raised bed area;
- (d) all dead plants or portions thereof are immediately removed from the vegetable garden;
- (e) the garden area is covered with pine straw or mulch at any time the garden is dormant;
- (f) the total square footage of the garden area does not exceed one hundred (100) square feet;
- (g) Garden is enclosed within a six (6) foot privacy fence not to exceed one hundred and forty four (144) square feet and not visible from the street (said privacy fence is required when the entire rear yard of a Lot is not entirely enclosed with a privacy fence; if the entire rear yard of a Lot is entirely enclosed with a privacy fence, then a second fence would not be required around the garden); and
- (h) Garden placement is within the sidelines of the residence on the Lot.



The Board may also establish community garden(s) in the Common Property and develop separate guidelines relating to the use and maintenance of such area(s).

**Section 8.4. Rain Barrels.** Notwithstanding any provision to the contrary contained herein, Owners shall be permitted to connect downspouts to plastic rain barrels without prior approval of the ARC provided that:

- (a) the water collected in the rain barrel is used for watering plants, irrigation, or other outdoor household purposes;
- (b) the water is not permitted to stagnate where it has an odor;
- (c) the rain barrel is enclosed so that it is not accessible to or a breeding ground for animals, rodents or insects; and
- (d) the rain barrel is beige or brown in color or of a natural wood appearance.

**Section 8.5. Other Energy Devices.** Notwithstanding any provision to the contrary contained herein and except for devices installed by Declarant, Owners shall be permitted to install artificial or man-made devices which are designed or used for collection of energy by wind or geothermal energy or other similar purposes, provided that such devices are:

- (a) Installed on the rear of the Lot;
- (b) Not visible from the front of the Lot;
- (c) Not in violation of any governmental or regulatory regulation; and
- (d) Approved by the ARC prior to installation.

## **ARTICLE 9. MAINTENANCE; CONVEYANCE OF COMMON PROPERTY TO ASSOCIATION**

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### **Section 9.1. Association's Responsibility.**

(a) The Association shall maintain and keep in good repair the Area of Common Responsibility. This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping, fencing, paving and other improvements located on the Common Property. Specifically, but not by way of limitation, the Association shall maintain: (a) all storm water retention detention or ponds and structures located in the Community, if and to the extent such ponds and storm water drainage systems are not maintained by a public entity, governmental entity, or owners of neighboring property; (b) all entrance features in the Community whether located on a Lot or on the Common Property; (c) sidewalks located on the Common Property unless maintained by a public entity; (d) any streets, roads, and alleys located within the Community which are not maintained on an ongoing basis by a governmental or public entity; (e) any retaining walls in the Community which serve more than one Lot, (f) all Community green space and Common Property, (g) all street lighting in the Community to the extent not maintained by a governmental entity, (h) any central mailbox areas and mailbox kiosks within the Community, (i) any irrigation to Common Property within the Community, and (j) any Community fencing (as determined by the Board) which is located on Lots.



In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether located within or outside the Community, where the Board has determined that such maintenance would benefit the Association.

The Association shall also maintain all property outside of Lots located within the Community which was originally maintained by Declarant or its affiliates.

In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association, is caused through the willful or negligent act of an Owner or Occupant, his or her family, guests, lessees, or invitees, and is not completely covered or paid for by insurance, then the Association may perform the maintenance, repair, or replacement at the expense of the Owner or Occupant, and all costs shall be added to and become a part of the assessment obligation of the Owner or Occupant and shall become a lien against the Lot of that Owner or Occupant.

The Association shall perform all maintenance in a manner consistent with the Community-Wide Standard.

**Section 9.2. Owner's Responsibility.** Except as provided in Section 9.1 above and unless such maintenance responsibility is otherwise assumed or assigned to the Association pursuant to this Declaration, or any Supplementary Declaration, all maintenance of the Lots and all structures, parking areas, landscaping, and other improvements on a Lot shall be the sole responsibility of the Owner, who shall maintain such areas in a manner consistent with the Community-Wide Standard and this Declaration. Such maintenance obligation shall include, without limitation, the following: (a) prompt removal of all litter, trash, refuse, and waste; (b) lawn mowing on a regular basis; (c) tree and shrub pruning; (d) watering landscaped areas; (e) maintaining sidewalks located on a Lot unless maintained by a local governmental entity; (f) keeping improvements and exterior lighting in good repair and working order; (g) keeping lawn and garden areas alive, free of weeds, and attractive; (h) keeping driveways and walkways in good repair; (i) complying with all governmental health and police requirements; (j) maintaining grading and storm water drainage as originally established on the Lot; (k) repairing exterior damage to improvements; (l) all maintenance, repair and replacement to the residential dwelling located on the Lot, including, without limitation, periodic painting and pressure washing as needed; (m) maintaining, repairing and replacing all storm water drainage facilities, including, all pipes, wires and conduits related thereto, located on and exclusively serving the Lot; and (n) maintaining, repairing and replacing all pipes, wires and conduits, including, without limitation, plumbing, electric and sanitary sewer systems, which exclusively serve the Lot. No landscaping shall be installed except in accordance with this Declaration and until a landscape plan complying with the Design Guidelines has been submitted to and approved by the ARC. In the event that the Board of Directors determines that such areas are not maintained in a manner consistent with the Community-Wide Standard and this Declaration, except in an emergency situation, the Board of Directors shall give the Owner written notice of the Association's intent to provide the necessary maintenance, repair, or replacement at the Owner's sole cost and expense. The notice shall state the maintenance, repairs, or replacement deemed necessary. The Owner shall have thirty (30) days after receipt of the notice to complete the maintenance, repair, or replacement. In the event that the maintenance, repair, or replacement is not capable of completion within a thirty (30) day period, the Owner shall begin the work and shall complete it within a reasonable time. If the Board determines that (i) an emergency exists, or (ii) that an Owner has not complied, the Association may provide the maintenance, repair, or replacement at that Owner's sole cost and expense, and all costs including reasonable attorneys' fees shall be added to and become a part of the assessment obligation of the Owner and shall become a lien against the Lot.

**Section 9.3. Maintenance Standards and Interpretation.** The maintenance standards and the enforcement thereof and the interpretation of maintenance obligations under this Declaration may vary as the composition of the Board of Directors changes. These variances shall not constitute a waiver by the Board of the right to adopt and enforce maintenance standards under this Article. No decision or



interpretation by the Board shall constitute a binding precedent with respect to subsequent decisions or interpretations by the Board.

**Section 9.4. Conveyance of Common Property to Association.** Declarant and SLV with the written approval of Declarant may transfer or convey to the Association any personal property and any improved or unimproved real property, leasehold, easement, or other property interest which is or may be subjected to the terms of this Declaration. Such conveyance shall be accepted by the Association, and the property shall be Common Property to be maintained by the Association for the benefit of all or a part of its members. Declarant and SLV shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section.

**Section 9.5. Removal of Improvements on Common Property by Declarant.** So long as Declarant or SLV owns any property in the Community, Declarant and SLV with the written approval of Declarant, shall have the right, privilege, and option from time to time to remove, add, reconfigure, relocate, modify, and alter any and all improvements located on the Common Property.

## **ARTICLE 10. INSURANCE AND CASUALTY LOSSES**

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**Section 10.1. Association Insurance.** The Association, acting through its Board of Directors or its duly authorized agent, shall have the authority to and shall obtain blanket "all-risk" property insurance, if reasonably available, for all insurable improvements on the Common Property and on other portions of the Area of Common Responsibility to the extent that the Association has assumed responsibility for maintenance, repair and/or replacement thereof in the event of a casualty. If blanket "all-risk" coverage is not generally available at reasonable cost, then at a minimum an insurance policy providing fire and extended coverage, including coverage for vandalism and malicious mischief, shall be obtained. The face amount of such insurance shall be sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any insured peril.

The Board also shall obtain a commercial general liability policy covering occurrences commonly insured against arising out of or in connection with the use, ownership, or maintenance of the Area of Common Responsibility. If generally available at reasonable cost, the commercial general liability policy shall have at least a One Million Dollar (\$1,000,000) combined single limit as respects bodily injury and property damage and at least a Two Million Dollar (\$2,000,000) limit per occurrence and in the aggregate. The liability insurance obtained by the Association pursuant to this Declaration shall cover the Association and the officers, agents and employees of the Association, the Owners, and their respective Mortgagees. The Association shall be designated as the named insured, individually and as agent for the Owners collectively, without naming them individually, and as agent for their respective Mortgagees.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the coverage required hereunder. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the Bylaws, that the loss is the result of the negligence or willful conduct of one or more Owners or Occupants, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Lots pursuant to Section 5.5 hereof.

All insurance coverage obtained by the Board of Directors shall be governed by the following provisions:

(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 be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees.

(d) All property insurance policies shall have an inflation guard endorsement, if reasonably available.

(e) If the policy contains a co-insurance clause, it shall also have an agreed amount endorsement.

(f) The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Gwinnett County, Georgia area.

(g) The Board of Directors shall be required to use reasonable efforts to secure insurance policies that will provide the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;

(ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;

(iii) a statement that no policy may be cancelled, invalidated, suspended, or subjected to nonrenewal on account of any one or more individual Owners;

(iv) a statement that no policy may be cancelled, invalidated, suspended, or subjected to nonrenewal on account of any curable defect or violation without prior demand in writing delivered to the Association to cure the defect or violation and the allowance of a reasonable time thereafter within which it may be cured by the Association, its manager, any Owner, or Mortgagee;

(v) a statement that any "other insurance" clause in any policy excludes individual Owners' policies from consideration; and

(vi) a statement that the Association will be given at least thirty (30) days' prior written notice of any cancellation, substantial modification, or non-renewal.

In addition to other insurance required by this Section, the Association shall obtain, as a Common Expense, worker's compensation insurance if and to the extent required by law, directors' and officers' liability coverage, if reasonably available, and flood insurance, if advisable.

In addition to the other insurance required by this Section, the Board may obtain a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds. The amount of fidelity coverage shall be determined by the Board using its best business judgment.

**Section 10.2. Repair and Reconstruction.** In the event of damage to or destruction of all or any part of the improvements on the property maintained by the Association as a result of any event covered by





the Association's insurance, unless seventy-five percent (75%) of the Total Association Vote and Declarant (so long as Declarant owns any property in the Community) decide within sixty (60) days after the loss not to proceed with the reconstruction and repair of the structure, the Board or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the structure.

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 said period, then the period shall be extended until such funds or information shall be made available. However, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Property shall be repaired or reconstructed.

If it is determined in the manner described above that the damage or destruction to the Common Property shall not be repaired or reconstructed and no alternative improvements are authorized, the affected portion of the properties shall be cleared of all debris and ruins. Thereafter, the properties shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community Standard.

(a) Cost Estimates. After a casualty causing damage to property maintained by the Association, the Board shall obtain reliable and detailed estimates of the cost of repairing and restoring the structures, if any, to substantially the condition which existed before such casualty, allowing for any changes or improvements necessitated by changes in applicable codes. Such costs may also include professional fees and premiums for such bonds as the Board determines to be necessary.

(b) Source and Allocation of Proceeds. If insurance proceeds are not sufficient to defray the estimated costs of reconstruction and repair of the property maintained by the Association, as determined by the Board, or if at any time during the reconstruction and repair or upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, a special assessment in an amount necessary to cover the insufficiency may be made against all of the members. If after repair and reconstruction is completed there is a surplus of funds, such funds shall be retained by the Association.

(c) Plans and Specifications. Any reconstruction or repair of the property maintained by the Association shall be substantially in accordance with the plans and specifications under which the Community was originally constructed, except where changes are necessary to comply with current applicable codes.

(d) Damage and Destruction to Improvements on Lots. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner within seventy five (75) days after the damage or within the required period and shall be diligently and continuously pursued until their completion. Alternatively, the Owner may demolish and remove all damaged improvements on the Lot within seventy five (75) days after such damage or destruction and maintain the property in a neat and clean condition consistent with the Community Standard.

## **ARTICLE 11. CONDEMNATION**

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In lieu of or under threat of condemnation by a governmental or other entity with the lawful power to condemn property, the Board of Directors shall have the power to convey portions of the Common Property to such governmental or other entity which has a lawful power to condemn real property in lieu of or under threat of condemnation. The award made for such taking shall be used by the Association as follows:

(a) If the taking involves a portion of the Common Property on which improvements have been constructed, then the Association shall restore or replace such improvements so taken on the remaining



land included in the Area of Common Responsibility to the extent lands are available, unless within sixty (60) days after such taking Declarant, so long as Declarant owns any property described in Exhibit "A" of this Declaration or has an unexpired right to submit the Additional Property to this Declaration, SLV, so long as SLV owns any property described in Exhibit "A" of this Declaration or has an unexpired right to submit the Additional Property to this Declaration, and Owners representing at least a majority of the Total Association Vote shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board of Directors of the Association. If such improvements are to be repaired or restored, the provisions in Article 10 hereof regarding the disbursement of funds for the repair of casualty damage or destruction shall apply.

If the taking does not involve any improvements on the Area of Common Responsibility, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors shall determine.

## **ARTICLE 12. MORTGAGEE PROVISIONS**

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

**Section 12.1. Notices of Action.** An Eligible Mortgage Holder, who provides a written request to the Association (such request to state the name and address of such Eligible Mortgage Holder and the Lot number) will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Mortgagee Holder;

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such Eligible Mortgage Holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days;

(c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) any proposed action, which would require the consent of a specified percentage of Mortgagees.

**Section 12.2. No Priority.** No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Association easement areas.

**Section 12.3. Notice to Association.** Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

**Section 12.4. Amendments by Board.** Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements, which



necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

**Section 12.5. Liability for Common Expenses.** Where the Mortgagee holding a first Mortgage of record or other purchaser of a Lot obtains title pursuant to judicial or non-judicial foreclosure of the Mortgage, it shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Lot which became due prior to such acquisition of title. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from Owners of all the Lots, including such acquirer, its successors and assigns. Additionally, such acquirer shall be responsible for all charges accruing subsequent to the passage of title.

**Section 12.6. Applicability of This Article.** Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or Georgia law for any of the acts set out in this Article.

**Section 12.7. Failure of Mortgagee to Respond.** Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

## **ARTICLE 13. EASEMENTS**

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**Section 13.1. Easements for Utilities.** There is reserved to Declarant, SLV, and the Association blanket easements upon, across, above, and under all property within the Community for access, ingress, egress, installation, repairing, replacing, and maintaining (a) all utilities serving the Community or any portion of the Common Property, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, (b) water runoff and storm drainage systems, and (c) any other services such as, but not limited to, a master television antenna system, cable television system, or security system which may be installed to serve the Community. It shall be expressly permissible for Declarant, SLV, the Association, or the designee of either, to do or to authorize the installation, repairing, replacing, and maintaining of the wires, conduits, cables, and other equipment related to providing any such utility or service. Should a party furnishing any such utility or service request a specific license or easement by separate recordable document, SLV, Declarant or Board, as applicable, shall have the right to grant such easement.

**Section 13.2. Easement for Entry.** In addition to the right of the Board to exercise self help as provided herein, the Board shall have the right, but not the obligation, to enter upon any property within the Community for emergency, security, and safety reasons. This right may also be exercised by the agents of the Association, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall be only during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. The Board shall have the right to enter to cure any condition that may increase the possibility of a fire, slope erosion, or other hazard if an Owner or Occupant does not cure the condition after request by the Board and in such event, the Owner shall be obligated to reimburse the Association for the cost of curing such condition and the Association may charge such cost to the Lot, as a specific assessment in accordance with Section 5.5 herein. For purposes of this Section, a water or other utility leak, fire, strong foul odor, obvious insect infestation, or sounds indicating that a person or animal might be injured or sick and require immediate medical attention shall be considered emergencies justifying immediate entry onto any Lot. The failure to exercise the rights herein or to exercise said rights in a timely manner shall not create liability to any of the above-referenced parties, it being agreed that no duty to enter a property shall exist.

**Section 13.3. Easement for Maintenance.** Declarant and SLV expressly reserve a perpetual easement for the benefit of the Association across such portions of the Community, including any and all



Lots, determined in the sole discretion of the Association, as are necessary to allow for the maintenance and/or repairs required pursuant to this Declaration. This maintenance shall be performed with a minimum of interference to the quiet enjoyment of a Lot.

**Section 13.4. Construction and Sale Period Easement.** Notwithstanding any provisions contained in this Declaration, the Bylaws, Articles of Incorporation of the Association, use restrictions, rules and regulations, Design Guidelines, and any amendments thereto, so long as Declarant or SLV own any property in the Community for development and/or sale or has an unexpired right to submit Additional Property to this Declaration, there is hereby reserved an easement across all property in the Community for Declarant and SLV with the written approval of Declarant to maintain and carry on, upon such portion of the Community as Declarant or SLV, may reasonably deem necessary, such facilities and activities as in the sole opinion of Declarant or SLV may be required, convenient, or incidental to Declarant's or SLV's, as the case may be, development, construction, and sales activities related to property described on Exhibit "A" to this Declaration and the Additional Property, including, but without limitation, (a) the right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in the Community, including, without limitation, any Lot; (b) the right to tie into any portion of the Community with driveways, parking areas and walkways; (c) the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; (d) the right to grant easements over, under, in or on the Community, including, without limitation, the Lots, for the benefit of the Additional Property for the purpose of tying into and/or otherwise connecting and using sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; (e) the right to carry on sales, marketing and promotional activities in the Community; (f) the right to erect and maintain signs; (g) the right to construct and operate business offices, construction trailers, model residences, and sales offices; and (h) the right to use the parking facilities within the Community. Declarant or SLV with the written approval of Declarant may use residences, offices, or other buildings owned or leased by Declarant or SLV as model residences and sales offices. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense. This Section shall not be amended without Declarant's express written consent until Declarant's rights hereunder have terminated as hereinabove provided.

**Section 13.5. Public in General.** The easements and rights created in this Article do not, are not intended to, and shall not be construed to create any easements or rights in or for the benefit of the general public; provided, however, that nothing set forth herein shall in any way limit or restrict any existing easements or rights already granted to the public as such easements or rights are previously recorded in the Official Records or which may exist in favor of property owners adjoining the Community. The Board of Directors hereby reserves the right to close temporarily, to the extent reasonably practicable, upon fifteen (15) days prior written notice (which may be given by posting in conspicuous locations upon the relevant portion of the Community), all or any portion of the Community which, in the reasonable opinion of the Board, may be legally necessary to prevent a dedication thereof, or any accrual of any rights therein, in the general public or in any Person other than the Persons for which such easements are expressly created in this Declaration.

**Section 13.6. Easement for Entry Features and Street Signs.** There is hereby reserved to Declarant, and granted to the Association, and the designees of either, 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 the entry features.



**Section 13.7. Easements for Drainage.** There is hereby reserved to Declarant, SLV, and 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, repairing, replacing, and maintaining the storm water drainage system and related facilities serving the Community or any portion thereof (but without obligation on the part of Declarant or SLV). Areas of storm drainage piping and retention or detention ponds within the Community may be maintained by governmental entities and such governmental entities may have easements over, across and under such areas. This easement shall include the right (but not obligation on the part of Declarant or SLV with the written approval of Declarant) to construct and maintain catch basins, retention or detention ponds, drainage swales, storm sewers, storm drains, sloping banks, cut or fill, except as otherwise handled by governmental entities. In addition, there is hereby reserved to the Declarant and SLV and granted to the Association a blanket easement across all Lots for creating and maintaining satisfactory drainage in the Community (but without obligation on the part of Declarant); 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, SLV, the Association nor any builder or Owner constructing according to plans and specifications approved or deemed approved under Article 6 hereof shall have any liability to any Owner due to the increased flow or increased velocity of surface water resulting from such construction.

#### **ARTICLE 14. ANNEXATION AND WITHDRAWAL OF PROPERTY**

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**Section 14.1. Annexation of Property by Declarant.** For twenty-five (25) years from the date this Declaration is recorded in the Official Records, Declarant or SLV with the written approval of Declarant shall be entitled to unilaterally annex a portion or all of the Additional Property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the Official Records a Supplementary Declaration describing the property being annexed. Any such Supplementary Declaration shall require the signature of Declarant only (and owner of the subjected property if not Declarant) and shall be effective upon the filing for record of such Supplementary Declaration, unless otherwise provided in such Supplementary Declaration.

Declarant intends to annex hereto the property contained in Declarant's land plan for the development, as amended from time to time, which property is a portion of the property described in Exhibit "B". However, inclusion of property on Declarant's land plan or in Exhibit "B" shall not obligate the Declarant to subject such property to the Declaration, nor shall exclusion of property from the initial land plan bar Declarant from subjecting such property to the Declaration. As long as covenants applicable to the real property previously subjected to this Declaration are not changed and as long as the rights of existing Owners are not adversely affected, Declarant may unilaterally amend this Declaration to reflect the different character of any such annexed real property. If any land is not subjected to this Declaration, Declarant shall not be required 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.

**Section 14.2. Annexation by the Association.** After the expiration of the twenty-five (25) year period referenced in Section 14.1 above, upon the written consent of (a) the owner(s) thereof, and (b) the Owners of at least two-thirds (2/3) of the Lots, the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the Official Records a Supplementary Declaration describing the property being annexed. Any such Supplementary Declaration shall be executed on behalf of the Association by the President of the Association whose signature shall be attested by the Secretary of the Association. The annexation shall be effective only upon the filing for record of such Supplementary Declaration in the Official Records, unless a later effective date is provided therein.



**Section 14.3. Withdrawal of Property.** Declarant reserves the right to amend this Declaration so long as either have a right to annex additional property pursuant to this Article for the purpose of removing any portion of the Community then owned by Declarant, or the Association from the coverage of this Declaration, to the extent originally included in error or 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.

**Section 14.4. Additional Covenants and Easements.** Declarant may unilaterally subject any portion of the Community submitted to this Declaration initially or by Supplemental Declaration to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrent with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than Declarant.

**Section 14.5. Creation of Additional Neighborhoods and Annexation of Property to this Declaration.** The Declarant reserves the unilateral right, but not necessarily the obligation, to (a) create additional neighborhoods on all or any portion of the property described in Exhibit "B" attached hereto and incorporated herein, which neighborhoods may be organized as one or more associations, and (b) to subject said property and neighborhood(s) to the terms of this Declaration.

## **ARTICLE 15. GENERAL PROVISIONS**

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**Section 15.1. Duration.** The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent permitted by law. However, so long as Georgia law limits the period during which covenants restricting lands to certain uses may run, any provision of this Declaration affected by the law shall run with and bind the land so long as permitted by the law, after which time the provisions shall be automatically extended for successive periods of twenty (20) years, unless at least sixty-six and two-thirds percent (66 2/3%) of the record Owners execute an agreement to prevent renewal of the covenants and such agreement is recorded and an attorney's affidavit confirming ownership of the Lots or such other requirement as provided in O.C.G.A. §44-5-60. A written instrument reflecting termination must be recorded within two (2) years prior to the expiration of the initial twenty (20) year period or any subsequent twenty (20) year period. 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, agrees that provisions of this Declaration may be extended and renewed as provided in this Section.

**Section 15.2. Termination of Rights of SLV.** The rights of SLV to take, approve or consent to actions under this Declaration, the Articles of Incorporation and the Bylaws shall cease and be of no further force and effect upon the earlier of: (a) the date that SLV no longer owns any property in the Community; and (b) the date of recording by SLV in the Official Records of a written instrument terminating all of SLV's rights hereunder.

**Section 15.3. Termination of Rights of Declarant.** The rights of Declarant to take, approve or consent to actions under this Declaration, the Articles of Incorporation and the Bylaws shall cease and be of no further force and effect upon the earlier of: (a) the date that the Declarant no longer owns any property in the Community and no longer has the right to unilaterally annex additional property to the Community as provided herein and a certificate of occupancy has been issued for the residential dwelling located on each Lot in the Community; and (b) the date of recording by Declarant in the Official Records of a written instrument terminating all of Declarant's rights hereunder.

**Section 15.4. Amendment.**

(a) This Declaration or the Bylaws may be amended unilaterally at any time and from time to time by Declarant (i) if an amendment is necessary to bring any provision into compliance with any applicable governmental statute, rule, or regulation or judicial determination with which it is in conflict; (ii) if an amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the property subject to this Declaration; (iii) if an 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 the lender or purchaser to make or purchase Mortgage loans on the property subject to this Declaration; or (iv) if an amendment is necessary to enable any governmental agency or reputable private insurance company to insure or guarantee Mortgage loans on the property subject to this Declaration. However, any such amendment shall not adversely affect the title to any Owner's Lot unless the Owner consents to the amendment in writing. Further, so long as Declarant owns any Lot for development or sale, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owner, nor shall it adversely affect title to any Lot without the consent of the affected Owner.

(b) In addition to the above, this Declaration or the Bylaws may be amended upon the affirmative vote or written consent, or any combination of affirmative vote and written consent, of Owners holding at least two-thirds (2/3) of the Total Association Vote, the consent of Declarant (so long as Declarant owns any Lot for development or sale), and the consent of SLV (so long as SLV owns any Lot for development or sale). Amendments to this Declaration or the Bylaws shall become effective upon recordation, unless a later effective date is specified in the amendment. No provision of this Declaration or the Bylaws which reserves, grants, or exempts special rights, easements, or exemptions to Declarant or SLV, shall be amended or removed without Declarant's prior written consent so long as Declarant or SLV own any property in the Community, or which is subject to annexation to the Community, primarily for development and/or sale.

(c) Any action to challenge the validity of an amendment adopted under this Section must be brought within one (1) year of the amendment's effective date. No action to challenge any such amendment may be brought after such time.

(d) In addition to the above, within sixty (60) days after the end of the Declarant Control Period, the Board is authorized, without a vote of the Association membership, to amend this Declaration to submit the Community to the Property Owners Association Act of Georgia, O.C.G.A. §44-3-220, *et seq.*

**Section 15.5. SECURITY. THE ASSOCIATION OR DECLARANT MAY, BUT SHALL NOT BE REQUIRED TO, FROM TIME TO TIME, PROVIDE MEASURES OR TAKE ACTIONS WHICH DIRECTLY OR INDIRECTLY IMPROVE SAFETY IN THE COMMUNITY. HOWEVER, EACH OWNER, FOR HIMSELF OR HERSELF AND HIS OR HER TENANTS, GUESTS, LICENSEES, AND INVITEES ACKNOWLEDGES AND AGREES THAT NEITHER THE ASSOCIATION NOR DECLARANT IS A PROVIDER OF SECURITY AND NEITHER PARTY SHALL HAVE A DUTY TO PROVIDE SECURITY FOR THE COMMUNITY. FURTHERMORE, NEITHER DECLARANT NOR THE ASSOCIATION REPRESENTS THAT NON-OWNERS AND NON-OCCUPANTS WILL NOT GAIN ACCESS TO THE COMMUNITY AND COMMIT CRIMINAL ACTS NOR DOES DECLARANT OR THE ASSOCIATION REPRESENT THAT CRIMINAL ACTS WILL NOT BE COMMITTED BY OTHER OWNERS OR OCCUPANTS. IT SHALL BE THE RESPONSIBILITY OF EACH OWNER TO PROTECT HIS OR HER PERSON AND PROPERTY, AND ALL RESPONSIBILITY TO PROVIDE SUCH SECURITY SHALL LIE SOLELY WITH EACH OWNER. DECLARANT, SLV, AND THE ASSOCIATION SHALL NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN.**



**Section 15.6. Dispute Resolution.** Any Owner or Occupant must give written notice to the Board requesting a hearing with the Board and attend such hearing to discuss amicable resolution of any dispute before that Owner or Occupant files any lawsuit against the Association, the Board, any director or officer or any agent of the Association. The Owner or Occupant shall in such notice and at the hearing, make a good faith effort to explain the grievance to the Board and resolve the dispute in an amicable fashion, and shall give the Board a reasonable opportunity to address the Owner's or Occupant's grievance before filing suit. Upon receiving a request for a hearing, the Board shall give notice of the date, time, and place of the hearing to the person requesting the hearing. The Board shall schedule this hearing for a date no less than seven (7) nor more than twenty-one (21) days from the date of receipt of the notice of hearing by the person requesting the hearing.

**Section 15.7. Partition.** The Common Property shall remain undivided, and no Owner or any other Person shall bring any action for partition or division of the whole or any part of the Common Property without the written consent of all Owners and all holders of all Mortgages encumbering any portion of the Community.

**Section 15.8. 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.

**Section 15.9. 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.

**Section 15.10. 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.

**Section 15.11. Perpetuities.** If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

**Section 15.12. Notices.** Except as otherwise specifically provided in such document(s), as the case may be, notices provided for in this Declaration or the Articles or Bylaws shall be in writing, and shall be addressed to an Owner at the address of the Lot and to SLV, Declarant, and to the Association at the address of their respective registered agent on file with the Secretary of State of the State of Georgia. Any Owner may designate a different address, including an electronic mail address, for notices to such Owner by giving written notice to the Association. Owners shall keep the Association advised of their current address and phone number(s) where they can be reached. Notices addressed as above shall be mailed by United States Registered or Certified Mail, return receipt requested, postage prepaid, or delivered in person, including delivery by Federal Express or other reputable commercial courier service, or issued electronically in accordance with Chapter 12 of Title 10 of the Official Code of Georgia Annotated, the "Uniform Electronic Transactions Act." The time period in which a response to any such notice must be given or any action taken with respect thereto, shall commence to run from the date of personal delivery or date of receipt shown on the return receipt. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice sent.

**Section 15.13. Notice of Sale or Acquisition.** Owners must keep the Association apprised of their name, address and telephone number. Accordingly, prior to the sale of a Lot, the Owner shall provide





the Association with written notice of the name of the purchaser and such other information as the Board may reasonable require. Upon acquisition of a Lot, each new Owner shall provide the Association with written notice of the name, mailing address and telephone number of the Owner, the names of the Occupants of the Lot, if any, and such other information as the Board may reasonably require. All Owners shall notify the Association of any change in name, address, or telephone number.

**Section 15.14. Indemnification.** To the fullest extent allowed by the Georgia Nonprofit Corporation Code, and in accordance therewith, the Association shall indemnify every current and former officer, director and committee member against any and all expenses, including, but not limited to, attorneys' fees, imposed upon or reasonably incurred by any officer, director or committee member in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which such officer, director or committee member may be a party by reason of being or having been an officer, director or committee member. The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association and the Association shall indemnify and forever hold each such officer, director and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director or committee member, or former officer, director or committee member, may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

**Section 15.15. Transfer of Declarant's Rights.** Any or all of the special rights and obligations of Declarant set forth in this Declaration or the Bylaws may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration or in the Bylaws, as applicable. Furthermore, no such transfer shall be effective unless it is in a written instrument signed by Declarant (and SLV while it is the Owner of any Lot in the Community) and duly recorded in the Official Records.

**Section 15.16. Sale of Lots.** An Owner intending to make a transfer or sale of a Lot or any interest in a Lot shall give written notice to the Board of Directors of such intention within seven (7) days after execution of the transfer or sales documents. The Owner shall furnish to the Board as part of the notice (a) the name and address of the intended grantee; and (b) such other information as the Board may reasonably require. This Paragraph shall not be construed to create a right of first refusal in the Association or in any third party.

Within seven (7) days after receiving title to a Lot, the purchaser of the Lot shall give written notice to the Board of Directors of his or her ownership of the Lot. Upon failure of an Owner to give the required notice within the seven (7) day time period provided herein, the Board may levy fines against the Lot and the Owner thereof, and assess the Owner for all costs incurred by the Association in determining his or her identity.

**Section 15.17. Agreements.** Subject to the prior approval of Declarant (so long as Declarant owns any property in the Community), and SLV (so long as SLV owns any property in the Community), 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.

**Section 15.18. No Discrimination.** No action shall be taken by the Declarant, SLV, the Association or the Board of Directors which would unlawfully discriminate against any person on the basis of race, creed, color, national origin, religion, sex, familial status or disability.



**Section 15.19. Cumulative Effect; Conflict.** The covenants, restrictions, and provisions of this Declaration shall be cumulative with those of any declaration affiliated with the Community and the corresponding association may, but shall not be required to, enforce the latter; provided, however, in the event of conflict between or among such covenants and restrictions, and the provisions of any articles of incorporation, bylaws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, those of any declaration or association affiliated with the Community shall be subject and subordinate to those of this Declaration and the Association. In the event of a conflict between the provisions of this Declaration and the provisions of Georgia law, then to the extent that the provisions of Georgia law cannot be waived by agreement, Georgia law shall control.

**Section 15.20. Implied Rights.** The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws, the Articles of Incorporation, 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 or reasonably necessary to effectuate the right or privilege.

**Section 15.21. Variances.** Notwithstanding anything to the contrary contained in this Declaration, Declarant, as long as it owns a Lot for sale within the Community, SLV, as long as it owns a Lot for sale within the Community, and the Board of Directors or its designee shall be authorized, but not required, in its sole discretion to grant individual variances from any of the provisions of this Declaration, the Bylaws, and any rule, regulation, or use restriction promulgated pursuant thereto, if it determines that waiver of application or enforcement of the provision in a particular case would not materially harm other Owners or negatively affect other Owners' quality of life in the Community.

**Section 15.22. Successor Declarants.** Any successor to Declarant shall not be responsible or subject to liability by operation of law or through the purchase of Declarant's interest in the Community or any portion thereof at foreclosure or otherwise for any act, omission, or matter occurring or arising from any act, omission, or matter occurring prior to the time the successor succeeded to the interest of Declarant.

**Section 15.23. Disclosures.** Each Owner and Occupant acknowledges the following:

(a) Community Conditions. Since in every community, there are conditions that different people may find objectionable, it is acknowledged that there may be conditions within and outside of the Community that an Owner or Occupant may find objectionable and that it shall be the sole responsibility of the Owners and Occupants to become acquainted with community conditions that could affect the Lot.

(b) Adjacent Properties. Neither Declarant, SLV, nor any builder of homes within the Community make any representations or warranties regarding the future development or use of the Additional Property or other properties adjacent to or in the vicinity of the Community (collectively "Adjacent Properties"), which may not necessarily be restricted exclusively to residential use, but shall be subject only to uses allowed by applicable zoning ordinances, including without limitation, office, retail or other commercial uses. Any floor plans, renderings, models, drawings, and the like, which purport to depict such Adjacent Properties, or any portion thereof, are merely projections, which are subject to change and do not reflect an actual commitment to develop the Adjacent Properties in any particular manner. No Owner and Occupant shall rely on any projected plans for the future development of the Adjacent Properties as an inducement to acquire or occupy a Lot. The property located south of the Community is currently used as a hospital and may contain a heli-pad site with active air traffic, ambulance and emergency vehicles, and affiliated emergency sounds, light, and traffic.

(c) Off-Site Conditions. Declarant or SLV shall not be responsible for responding to or taking any affirmative action on behalf of the Association or an individual member of the Association to mitigate, alleviate, remedy or cure any off-site conditions that may directly impact the Community or any portion thereof, and such inaction by Declarant or SLV shall not constitute a breach of fiduciary duty by the directors and officers of the Association that are appointed by Declarant, pursuant to Section 3.2 of the Bylaws.



(d) Crime. Crime exists in every neighborhood and the Declarant, SLV, all builders of homes within the Community and the Association and their affiliates make no representations regarding crime or security. Declarant, SLV, all builders of homes within the Community and the Association are not providers of security and that if an Owner is concerned about crime or security, Owner should consult a security expert. Owners should be alert to and guard against the potential for crime. Crime statistics are maintained by the police in the jurisdiction in which the Community is located. It shall be Owner's sole responsibility to keep abreast of trends in criminal activity and to act accordingly.

(e) Easements. The Community is subject to all conditions, restrictions and easements of record and those set forth on the Survey, including, but not limited to, all drainage and sanitary sewer easements shown thereon.

(f) Right-of-ways. The Community is located adjacent to thoroughfares that may be noisy and clogged with traffic from time to time and may be improved and/or widened in the future.

(g) Light and Views. The natural light available to and views from an Owner's Lot may change over time due to, among other circumstances, additional development and the growth or removal or addition of landscaping within the Community and in the surrounding neighborhood. Light may emit from structures located on Adjacent Properties.

(h) Zoning. No representations are made regarding the zoning of adjacent property, or that the category to which adjacent property is zoned may not change in the future.

(i) Schools. No representations are made regarding the schools that currently or may in the future serve the Lot.

(j) Construction Activities. Declarant and other builders may be constructing portions of the Community and engaging in other construction activities related to the construction of Common Property and additional phases of the Community. Such construction activities may, from time to time, produce certain conditions on the Community, including, without limitation: (A) noise or sound that is objectionable because of its volume, duration, frequency or shrillness; (B) smoke; (C) noxious, toxic, or corrosive fumes or gases; (D) obnoxious odors; (E) dust, dirt or flying ash; (F) unusual fire or explosion hazards; (G) temporary interruption of utilities; and/or (H) other conditions that may threaten the life-safety of Persons on the Community. Notwithstanding the foregoing, all Owners and Occupants agree that such conditions on the Community resulting from renovation and construction activities shall not be deemed a nuisance and shall not cause Declarant, SLV, and their agents to be deemed in violation of any provision of this Declaration.

(k) Construction Changes. Building code requirements may change during the construction of the Community and may not necessarily be incorporated into the design or construction of the Community. During construction, there may be changes and alterations made to the original stamped and approved design drawings and the construction of the Community as a matter of necessity to achieve cost savings and due to field changes ordered by the architect, engineer, seller and various building inspectors.

(l) Community Scope. During the course of the construction of any home on a Lot within the Community or construction on any Common Property, variations from the original plans and specifications, some of which add scope, some of which reduce scope, and some of which alter scope, are inevitable and can, do, and may occur as a matter of intention and/or as a matter of necessity. Therefore, some code requirements may change during the interim period which may not be incorporated into the design of the Community.



(m) Construction Materials. Various substances used in the construction of the improvements in the Community may now or in the future be determined to be toxic, hazardous or undesirable and may need to be specifically treated, handled and/or removed from the Community. The construction materials used may contain some of the following chemicals and minerals in measurable amounts: water (which may allow the growth of mold, mildew and fungus); formaldehyde (used in the manufacture of carpeting, insulation and pressed wood products); arsenic (used in treating wood products); methylene chloride (used in paint thinners); fiberglass; and petroleum products. Declarant and the builders of homes within the Community have no expertise with respect to toxic wastes, hazardous substances, pet dander, dust mites, or other undesirable substances. Such substances can be extremely costly to correct and remove and Declarant and all builders of homes within the Community shall have no liability to the Association, any Owner or any Occupant regarding the presence of such substances in the Community. All buildings contain products that have water, powders, solids and industrial chemicals, which will be used in construction. The water, powders, solids and industrial chemicals will and do contain mold, mildew, fungus, spores and chemicals that may cause allergic or other bodily reactions in certain individuals.

(n) Asbestos. Asbestos can be found as accessory minerals in mineral deposits and occurs in its natural state in some rock formations. The Declarant, builders of homes within the Community or the Association shall not conduct tests to determine the presence or absence of any type of naturally occurring asbestos in the soil of the Community. Neither Declarant, SLV, builders of homes within the Community, nor the Association make any representations or warranties concerning the presence or absence of said minerals.

(o) Gases. The grading of the soil and other elements created by nature, as well as building materials developed by humans, many times create unwanted and undesired gases and other contaminants in homes and residential buildings, both new and used. Also, since energy conservation has become a concern, there is a need to build homes and residential buildings that are more airtight. As a result, these homes and residential buildings trap unwanted gases in different degrees depending on how each person lives within their home or such residential building. To date measurements of such unwanted gases (such as the radon gas described below and carbon dioxide) are reported as parts of the air they occupy. Since the quality of air a person breathes can affect his or her health, Declarant recommends frequent airing of a residence to introduce fresh air uncontaminated with such gases.

(p) Radon. The United States Environmental Protection Agency ("EPA") has indicated that a number of homes and residential buildings in the United States experience elevated levels of radon gas. Radon is a naturally occurring gas that is caused by radioactive decay of the element radium. Since radium is contained in the earth's crust and dissolves readily in water, radon can be found virtually everywhere and can enter the home or residential buildings through a variety of sources. Owners or Occupants seeking information about radon can contact the EPA or a state environmental office. Neither Declarant nor the Association has any expertise in the measurement or reduction of radon in homes or residential buildings or regarding acceptable levels or possible health hazards associated with radon. Neither Declarant, SLV, nor the Association make any warranty or representation of any kind, express or implied, regarding the presence or absence of radon gas, or regarding the effectiveness of any architectural activities for reducing the presence of radon.

(q) Carbon Monoxide. Carbon monoxide is a dangerous gas that typically cannot be smelled or seen. It is produced as a common by-product of the combustion (burning) of fossil fuels. Most fuel burning equipment (natural gas, gasoline, propane, fuel oil, and wood), if properly installed and maintained, produces little carbon monoxide. The by-products of combustion are usually vented to the outside. However, if there is a shortage of oxygen to the burner, or the venting is not adequate, carbon monoxide production can increase to dangerous levels. Common sources of carbon monoxide include gasoline engines running in closed garages, fuel-burning space heaters or water heaters with improper venting, and blocked chimneys or vent pipes. Each Owner should have a qualified professional routinely



maintain and inspect all heating systems and any fuel-burning appliances serving the Owner's Lot annually to ensure they are in good working condition. Each Owner should have a qualified professional routinely inspect appliance vents in the Lot annually for blockages, corrosion, cracks or leakage. Each Owner should consider installing and maintaining a carbon monoxide detector and alarm that measures the amount of carbon monoxide in the air and sounds an alarm at certain levels. The detector should be considered as a backup and not as a replacement for proper use and maintenance of fuel-burning appliances.

(r) Noise. Owners and Occupants shall not undertake or pursue hobbies or other activities on a Lot which can be heard in any other Lot. Accordingly, no Owner or Occupant shall install a speaker of any kind in the window of any home on a Lot.

(s) Utility Infrastructure. Declarant and all other builders of homes within the Community make no representation as to the location of mailboxes, utility boxes, street lights, fire hydrants or storm drain inlets or basins.

(t) Plans. Any floor plans, advertising materials, brochures, renderings, drawings, and the like, which purport to depict the homes to be constructed on Lots in the Community or any portion thereof, are merely approximations and do not necessarily reflect the actual as-built conditions of the same. Due to the unique nature of the construction process and site conditions, room dimensions, size and elevations may vary from home to home within the Community.

(u) Encroachments. Improvements may have been constructed on Adjacent Properties that encroach onto the Community.

(v) Trees. Trees, plants, shrubbery, rocks and landscaping existing within the Community may be adversely affected or removed during development construction activities and homebuilding activities within the Community.

(w) Erosion. There may be drainage systems for surface water runoff within the Community and portions of the Community may be subject to erosion and/or flooding during certain types of weather conditions.

(x) Sound and Vibrations. Homes on Lots within the Community will not be soundproof, free of vibrations, and sound and vibrations may be transmitted from one Lot to another, from the Common Property to a Lot and from outside of the Community to a Lot. By way of example only, sound and vibrations may be felt from such things as sirens, whistles, horns, the playing of music, equipment being operated, construction activity, building and grounds maintenance being performed, ambulances, airplanes, trains and other generators of sound and vibrations typically found in and around a neighborhood.

(y) Odors. There may be odors which affect the Community.

(z) Water. Water may pond on various portions of the Community having impervious surfaces.

(aa) Art. Any artwork displayed in the Common Property, model homes, construction offices and sales offices within the Community may be the property of Declarant and not the Association. Such artwork may be the property of third party(ies) and such third party(ies) shall retain the right to remove or alter such artwork at any time. Artwork may also belong to other third parties, such as artists and galleries, who have permitted the artwork to be displayed temporarily on the Common Property, model homes, construction offices and sales offices.



(bb) Images and Photography. At various times, Declarant, the builders of homes within the Community and the Association may use exterior images, pictures and photography of the Community, including Lots, for publication, advertising, sales and marketing purposes. Photography and film activities (including bright lighting) related to sales and marketing of the Community may occur at various times of the day within the Community so long as Declarant owns a Lot within the Community.

(cc) Marketing. From time to time, there may be marketing collateral throughout the Community, including, but not limited to, signs, flags, banners, media advertising, etc.

(dd) Media Equipment. Electronic media equipment located in the Common Property (including, but not limited to televisions) may be the property of third party(ies) and such third party(ies) shall retain the right to remove or alter such equipment at any time.

(ee) Community and Street Names. The name of the Community and street names within the Community may change.

(ff) Offsite Detention. Portions of the Community are subject to that certain Declaration of Protective Covenants and Easements for Eastside Property Owners Association, Inc. dated February 23, 2015 and recorded on March 6, 2015 in Deed Book 53415, Page 325, et seq. of the Official Records. Third parties may from time to time access the Community pursuant to the terms of such document.

[SIGNATURES ON FOLLOWING PAGE]



IN WITNESS WHEREOF, the undersigned, Declarant herein, hereby executes this instrument by and through its duly authorized officers and under seal this 6 day of November, 2015.

**DECLARANT:**

FD Communities, LLC,  
a Delaware limited liability company

By: Terry Russell (SEAL)

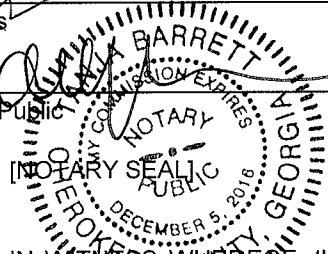
Name: Terry Russell

Title: CEO

Signed, sealed, and delivered  
this 6 day of November, 2015  
in the presence of:

Witness \_\_\_\_\_

Notary Public \_\_\_\_\_



IN WITNESS WHEREOF, the undersigned, SLV herein, hereby executes this instrument by and through its duly authorized officers and under seal this 6 day of November, 2015.

**SLV:**

SLV Georgia 1 LLC,  
a Georgia limited liability company

By: Steve Check (SEAL)

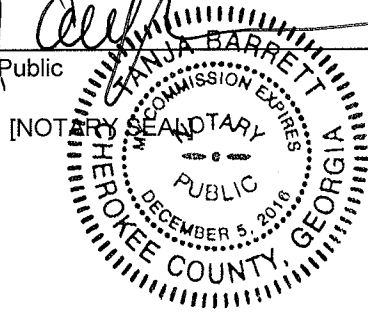
Name: Steve Check

Title: Vice President

Signed, sealed, and delivered  
this 6 day of November, 2015  
in the presence of:

Witness \_\_\_\_\_

Notary Public \_\_\_\_\_



BK53980 PG0778



EXHIBIT "A"

PROPERTY SUBMITTED

All those tracts or parcels of land lying and being in Land Lot 41 of the 5<sup>th</sup> District of Gwinnett County, Georgia, being more particularly described as Shadowbrook Crossing Phase I as shown on that certain Final Subdivision Plat for Shadowbrook Crossing Phase I, recorded on November 25, 2015 in Plat Book 135, Page 17, et seq., Gwinnett County, Georgia records.



BK53980 PG0779



EXHIBIT "B"


ADDITIONAL PROPERTY

All that tract or parcel of land lying and being in Land Lots 41 and 56 of Gwinnett County, Georgia currently owned by Declarant or SLV or to be owned in the future.



EXHIBIT "C"

BYLAWS  
OF  
SHADOWBROOK CROSSING NEIGHBORHOOD ASSOCIATION, INC.

Weissman Nowack   
Curry & Wilco, P.C.  
ATTORNEYS AT LAW  
One Alliance Center, 4<sup>th</sup> Floor  
3500 Lenox Road  
Atlanta, Georgia 30326  
(404) 926-4500

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## BYLAWS

## OF

## SHADOWBROOK CROSSING NEIGHBORHOOD ASSOCIATION, INC.

ARTICLE 1. GENERAL

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**Section 1.1. Applicability.** These Bylaws provide for the self-government of ShadowBrook Crossing Neighborhood Association, Inc., in accordance with the Articles of Incorporation filed with the Georgia Secretary of State ("Articles of Incorporation") and the Declaration of Covenants, Conditions, Easements and Restrictions for ShadowBrook Crossing recorded in the Gwinnett County, Georgia land records ("Declaration").

**Section 1.2. Name.** The name of the corporation is ShadowBrook Crossing Neighborhood Association, Inc. ("Association").

**Section 1.3. Definitions.** The terms used herein shall have their generally accepted meanings or such meanings as are specified in Article 1 of the Declaration.

**Section 1.4. Membership.** An Owner of a Lot shall automatically become a member of the Association upon taking title to the Lot and shall remain a member for the entire period of ownership. As may be more fully provided below, a member's spouse or Domestic Partner may exercise the powers and privileges of the member. If title to a Lot is held by more than one (1) Person, the membership shall be shared in the same proportion as the title, but there shall be only one (1) membership and one (1) equal vote per Lot. Membership does not 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 the Owner's membership. Membership shall be appurtenant to the Lot and shall be transferred automatically by conveyance of that Lot and may be transferred only in connection with the transfer of title.

**Section 1.5. Entity Members.** In the event an Owner is a corporation, limited liability company, partnership, trust, or other legal entity not being a natural person or persons, then any natural person who is an officer, director, representative, or other designated agent of such entity shall be eligible to represent such entity in the affairs of the Association, including, without limitation, serving on the Board of Directors of the Association. Such person's relationship with the Association shall terminate automatically upon the termination of such person's relationship with the entity which is the Owner, and termination of the person's relationship with the Association will create a vacancy in any elected or appointed position within the Association in which such person may have been serving and such vacancy will be filled in accordance with these Bylaws.

**Section 1.6. Voting.** Each Lot shall be entitled to one (1) equal vote, which vote may be cast by the Owner, the Owner's spouse or Domestic Partner, or by a lawful proxy as provided below. When more than one (1) Person owns a Lot, the vote for such Lot shall be exercised as they determine between or among themselves, but in no event shall more than one (1) vote be cast with respect to any Lot. If only one (1) co-owner attempts to cast the vote for a Lot, it shall be conclusively presumed that such co-owner is authorized on behalf of all co-owners to cast the vote for such Lot. In the event of disagreement between or among co-owners and an attempt by two (2) or more of them to cast such vote or votes, such Persons shall not be recognized and such vote or votes shall not be counted. No Owner shall be eligible to vote, either in person or by proxy, or to act as a proxy for any other member if that Owner is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association or if the Owner has had its voting rights suspended for the infraction of any provision of the Declaration, these Bylaws, or any rule of the Association. If the voting rights of an Owner have been suspended, that Owner shall not be counted as an eligible vote for purposes of establishing a majority or a quorum.



**Section 1.7. Majority.** As used in these Bylaws, the term "majority" shall mean those votes, Owners, or other group as the context may indicate totaling more than fifty percent (50%) of the total number of eligible votes, Owners, or other group, respectively. Unless otherwise specifically stated, the words "majority vote" means more than fifty percent (50%) of those voting in person or by proxy. Except as otherwise specifically provided in the Declaration or these Bylaws, all decisions shall be by majority vote.

**Section 1.8. Purpose.** The Association shall have the responsibility of administering the Community, establishing the means and methods of collecting the contributions to the Common Expenses, arranging for the management of the Area of Common Responsibility and performing all of the other acts that may be required to be performed by the Association pursuant to the Georgia Nonprofit Corporation Code and the Declaration. Except as to those matters which the Declaration or the Georgia Nonprofit Corporation Code specifically require to be performed by the vote of the Association membership, the administration of the foregoing responsibilities shall be performed by the Board of Directors as more particularly set forth below.

**Section 1.9. Electronic Documents and Electronic Signatures.**

(a) **Electronic Documents.** Whenever these Bylaws require that a document, record or instrument be "written" or "in writing," the requirement is deemed satisfied by an Electronic Document.

(b) **Electronic Signatures.** Whenever these Bylaws require a signature, an Electronic Signature satisfies that requirement only if: (i) the signature is easily recognizable as a Secure Electronic Signature which is capable of verification, under the sole control of the signatory, and attached to the electronic document in such a way that the document cannot be modified without invalidating the signature; or (ii) the Board reasonably believes that the signatory affixed the signature with the intent to sign the Electronic Document, and that the Electronic Document has not been modified since the signature was affixed.

(c) **Verification and Liability for Falsification.** The Board may require reasonable verification of any Electronic Signature or Electronic Document. Pending verification, the Board may refuse to accept any Electronic Signature or Electronic Document that, in the Board's sole discretion, is not clearly authentic. Neither the Board nor the Association shall be liable to any Member or any other Person for accepting or acting in reliance upon an Electronic Signature or Electronic Document that the Board reasonably believes to be authentic. Any Member or Person who negligently, recklessly or intentionally submits any falsified Electronic Document or an unauthorized Electronic Signature shall fully indemnify the Association for actual damages, reasonable attorneys' fees and expenses incurred as a result of such acts.

**ARTICLE 2. MEETINGS OF MEMBERS**

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**Section 2.1. Annual Meetings.** The regular annual meeting of the members shall be held each year with the date, hour, and place to be set by the Board of Directors. No annual meeting of the Association shall be set on a federal holiday.

**Section 2.2. Special Meetings.** Special meetings of the members may be called for any purpose at any time by the President or Secretary, by request of any two (2) members of the Board of Directors, or upon written petition of Owners holding at least twenty-five percent (25%) of the Total Association Vote. Any such written petition by the members must be submitted to the Association's Secretary. The Secretary shall then verify that the required number of members have joined in the petition and shall submit all proper petitions to the Association's President. The President shall then promptly call a special meeting for the purpose stated in the petition setting the date, time and location of the meeting (which is not required to be the date, time or location requested in any petition submitted to the Association), and the Secretary shall send notice of the meeting in accordance with these Bylaws.



Any special meeting called pursuant to written petition shall be set within thirty (30) days of the date of the petition.

**Section 2.3. Notice of Meetings.** It shall be the duty of the Secretary to mail or deliver to the record Owner of each Lot or to the Lots a notice of each annual or special meeting of the Association at least twenty-one (21) days prior to each annual meeting and at least seven (7) days prior to each special meeting. The notice shall state the purpose of any special meeting, as well as the time and place where it is to be held. The notice of an annual meeting shall state the time and place of the meeting. If any Owner wishes notice to be given at an address other than his or her Lot, the Owner shall have designated by notice in writing to the Secretary such other address. The mailing or delivering of a notice of meeting in the manner provided in this Section shall be considered proper service of notice.

**Section 2.4. Waiver of Notice.** Waiver of notice of meeting of the Owners shall be deemed the equivalent of proper notice. Any Owner may, in writing, waive notice of any meeting of the Owners, either before or after such meeting. Attendance at a meeting by an Owner, whether in person or represented by proxy, shall be deemed waiver by such Owner of notice of the time, date, and place thereof unless such Owner specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted at such meeting unless objection to lack of notice is raised before the business, of which proper notice was not given, is put to a vote.

**Section 2.5. Quorum.** Except as may be provided elsewhere, the presence of Owners, in person or by proxy, entitled to cast twenty-five percent (25%) of the Total Association Vote shall constitute a quorum. Once a quorum is established for a meeting, it shall conclusively be presumed to exist until the meeting is adjourned and shall not need to be reestablished. Owners whose voting rights have been suspended pursuant to the Declaration or these Bylaws shall not be counted as eligible votes toward the quorum requirement.

**Section 2.6. Adjournment.** Any meeting of the Owners may be adjourned from time to time for periods not exceeding ten (10) days by vote of the Owners holding the majority of the votes represented at such meeting, regardless of whether a quorum is present. Any business that could be transacted properly at the original session of the meeting may be transacted at a reconvened session, and no additional notice of such reconvened session shall be required.

**Section 2.7. Proxy.** Any member entitled to vote may do so by written proxy duly executed by the member setting forth the meeting at which the proxy is valid. To be valid, a proxy must be signed, dated, and filed with the Secretary or the Secretary's designated representative prior to the opening of the meeting for which it is to be used. Proxies may be filed with the Secretary or the Secretary's designated representative by personal delivery, U.S. mail or electronically. Proxies may be revoked only by written notice delivered to the Secretary, except that: (a) the presence in person by the giver of a proxy at a meeting for which the proxy is given shall automatically invalidate the proxy for that meeting; and (b) a later dated proxy shall automatically be deemed to invalidate any previously given proxy. A proxy holder may not appoint a substitute proxy holder unless expressly authorized to do so in the proxy.

**Section 2.8. Action Taken Without a Meeting.** In the Board's discretion, any action that may be taken by the Association members at any annual, regular, or special meeting may be taken without a meeting if the Board delivers a written consent form or written ballot to every member entitled to vote on the matter.

(a) **Ballot.** A written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and 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.



The Board may deliver ballots and consent forms by personal delivery, U.S. Mail, facsimile transmission, e-mail, or other electronic means. Owners shall deliver their vote by ballot or consent form by whatever means is specified by the Board.

All solicitations for votes by written ballot shall: (i) indicate the number of responses needed to meet the quorum requirements; (ii) state the percentage of approvals necessary to approve each matter other than election of directors; and (iii) specify the time by which a ballot must be received by the Board in order to be counted. A written ballot may not be revoked. The Association shall maintain such ballots in its file for at least three (3) years.

(b) **Written Consent.** Approval by written consent shall be valid only when the number of written consents setting forth the actions taken is received and equals or exceeds the requisite majority of 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 the Declarant, if required. Executed written consents shall be included in the minutes or filed with the Association's records. If an action of the members is approved by written consent hereunder, the Board shall issue written notice of such approval to all members who did not sign written consents. Membership approval shall be effective ten (10) days after written notice is issued; provided, however, if the consent is to an amendment to the Declaration or Bylaws which must be recorded, the effective date shall be no earlier than the date of recording of such amendment.

**Section 2.9. Order of Business.** The President shall establish the agenda for, and preside at, and the Secretary shall keep the minutes of, all membership meetings. The Board of Directors may establish rules of conduct and the order of business for all membership meetings. When not in conflict with the Declaration, these Bylaws, the Articles of Incorporation or meeting procedures adopted by the Board of Directors, Robert's Rule of Order (latest editions) shall govern all membership meetings. The Board may order the removal of anyone attending a membership meeting who, in the opinion of the Board disrupts the conduct of business at such meeting.

### **ARTICLE 3. BOARD OF DIRECTORS**

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**Section 3.1. Composition and Eligibility.** The affairs of the Association shall be governed by a Board of Directors. Except for directors appointed by the Declarant hereunder, the directors shall be Owners or spouses or Domestic Partners of such Owners; provided, however, no Owner and his or her spouse or Domestic Partner may serve on the Board at the same time, and no co-owners may serve on the Board at the same time. No persons shall be eligible to be elected to or continue to serve on the Board of Directors if they are shown on the books and records of the Association to be more than thirty (30) days delinquent in the payment of any assessment or charge by the Association.

**Section 3.2. Directors Appointed by the Declarant.** Notwithstanding anything to the contrary herein, Declarant shall have exclusive authority to appoint and remove directors and officers until the earlier of: (a) twenty-five (25) years after the recording of the Declaration, (b) thirty (30) days after the date as of which one hundred percent (100%) of the Lots shall have been conveyed by Declarant to Owners other than a Person constituting the Declarant, or (c) the surrender in writing by Declarant of the authority to appoint and remove officers and directors of the Association (the "Declarant Control Period").

**Section 3.3. Number of Directors and Term of Office.** During the Declarant Control Period, the Board shall consist of at least one (1) but not more than five (5) directors, the exact number of which shall be determined by Declarant from time to time. After termination of the Declarant Control Period, the Association shall call a meeting to be held at which Owners shall elect three (3) directors. If such meeting is not the annual meeting, the directors elected shall serve until the next annual meeting. At the first annual meeting after Declarant has surrendered control of the Association, if three (3) directors are elected, the two (2) directors receiving the highest number of votes shall be elected for terms of two (2) years each and the remaining director shall be elected for a term of one (1) year. At each annual meeting thereafter, 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 3.4. Removal of Members of the Board of Directors.** After expiration of the Declarant Control Period, at any annual or special meeting of the Association duly called, any one (1) or more Board members, except for directors appointed by Declarant hereunder, 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. Further, any director who is more than thirty (30) days past due in the payment of any assessment or charge shall be automatically removed from the Board of Directors, even if the director subsequently pays the amount owed, and the vacancy shall be filled as provided in Section 5 below. Any director who has had three (3) consecutive unexcused absences from regularly scheduled Board meetings may be removed by the vote of a majority of the other directors. Any director whose removal has been proposed shall be given at least ten (10) days' notice of the calling of the meeting to consider his or her removal and the purpose thereof and shall be given an opportunity to be heard at the meeting.

**Section 3.5. Vacancies.** Vacancies in the Board caused by any reason, except the removal of a director by a majority of the Total Association Vote or by Declarant, 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. The successor so selected shall hold office until the next annual meeting. Notwithstanding anything to the contrary herein, any director who is an officer, director or other designated agent of an entity member and whose position becomes vacant for any reason, may be replaced by the entity who is the Owner unless there has been a transfer of ownership of the Lot, in which case, the vacancy shall be filled by the remaining directors, even if less than a quorum at any meeting of the directors.

**Section 3.6. Compensation.** Directors shall not be compensated for services as such unless and only to the extent that compensation is authorized by a majority of the Total Association Vote. Directors may be reimbursed for the expenses incurred in carrying out their duties as directors upon approval of such expenses by the Board of Directors. Directors also may be given nominal gifts or tokens of appreciation by the Association for recognition of services performed, not to exceed a value of One Hundred Dollars (\$100) per calendar year. For purposes hereof, reasonable food and beverages purchased for Board meeting shall not be considered compensation.

**Section 3.7. Director Conflicts of Interest.** Nothing herein shall prohibit a director from entering into a contract and being compensated for services or supplies furnished to the Association in a capacity other than as director, provided that the director's interest is disclosed to the Board and the contract is approved by a majority of the directors who are at a meeting of the Board of Directors at which a quorum is present, excluding the director with whom the contract is made. The interested director shall not count for purposes of establishing a quorum of the Board. The interested director shall be entitled to be present at any meeting at which the proposed contract is discussed but shall not be entitled to discuss the proposed contract during the discussion. Notwithstanding anything herein, the directors, during the Declarant Control Period, shall be authorized on behalf of the Association to enter into contracts with the Declarant and its affiliates.

**Section 3.8. Nomination.** Nomination for election to the Board shall be made from the floor at the meeting. The Board also may appoint a nominating committee to make nominations prior to the meeting.

**Section 3.9. Elections.** All members of the Association eligible to vote shall be entitled to cast their entire vote for each directorship to be filled. There shall be no cumulative voting. The directorships for which elections are held shall be filled by that number of candidates receiving the most votes. Voting for election of Board members shall be by written ballot (unless dispensed by unanimous consent at such meeting at which such voting is conducted).

**Section 3.10. Regular Board Meetings.** Regular meetings of the Board may be held at such time and place as shall be determined from time to time by the Board, but such meetings shall be held at least once every six (6) months. The newly elected Board shall meet within ten (10) days after each annual meeting of the membership. Notwithstanding the foregoing, during the Declarant Control Period, the Board shall not be required to hold regular meetings.



**Section 3.11. Special Board Meetings.** Special meetings of the Board may be called by the President on two (2) days' notice to each director given by regular first class or electronic mail, in person, by telephone, or by facsimile transmission, which notice shall state the time, place, and purpose of the meeting. Special meetings of the Board shall be called by the President, Vice President, Secretary, or Treasurer in like manner and on like notice on the written request of at least two (2) directors.

**Section 3.12. Waiver of Notice.** Any director may, at any time, in writing, waive notice of any meeting of the Board, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board shall also constitute a waiver of notice by him or her of the time and place of such meeting. If all directors are present at any Board meeting, no notice shall be required and any business may be transacted at such meeting.

**Section 3.13. Conduct of Meetings.** The President shall preside over all meetings of the Board of Directors and the Secretary shall keep a minute book recording therein all resolutions adopted by the Board of Directors and a record of all transactions and proceedings occurring at such meetings. A majority of directors shall constitute a quorum for the transaction of business. One (1) or more directors who participate in a meeting by means of telephone or electronic communication shall be deemed present and in attendance for all purposes at such meeting, provided all persons participating in the meeting can hear each other.

**Section 3.14. Open Meetings.** Board meetings need not be open to all members. However, if the Board permits members to attend Board meetings, then members other than directors may not participate in any discussion or deliberation unless expressly so authorized by the Board. Notwithstanding the above, 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. The Board may order the removal of any meeting guest who, in the Board's opinion, either disrupts the conduct of business at the meeting or fails to leave the meeting upon request after an announcement of reconvening in executive session.

**Section 3.15. Action Without a Meeting.** Any action by the Board required or permitted to be taken at any meeting may be taken without a meeting if a majority of the directors consent to such action in writing, sent via hand delivery, regular first class or electronic mail or facsimile. Such consents must describe the action taken and be signed by no fewer than a majority of the directors and such consents shall be filed with the minutes of the Board of Directors.

**Section 3.16. Powers and Duties.** The Board of Directors shall manage the affairs of the Association and shall have all of the powers conferred upon nonprofit corporations by common law, the statutes of the State of Georgia in effect from time to time, and all of the powers necessary or desirable to perform the obligations and duties and to exercise the rights and powers set out in the Articles of Incorporation, these Bylaws, the Declaration, or the Georgia Nonprofit Corporate Code.

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 shall be responsible for the following, in the way of explanation, but not limitation:

(a) designating, hiring, and dismissing the personnel necessary for the operation of the Association and the maintenance, repair, and replacement of the Area of Common Responsibility 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;

(b) making and amending rules and regulations and imposing sanctions for violation thereof, including, without limitation, monetary fines;



(c) opening of bank or other financial accounts on behalf of the Association and designating the signatories required;

(d) making or contracting for the making of repairs, additions, and improvements to, or alterations of the Area of Common Responsibility in accordance with the other provisions of the Declaration and these Bylaws, after damage or destruction by fire or other casualty; and

(e) paying the costs of all services rendered to the Association or its members and not directly chargeable to specific Owners.

**Section 3.17. Management Agent.** The Association may, but shall not be required to, hire a professional management agent or agents, at a compensation established by the Board, to perform such duties and services as the Board of Directors shall authorize. The Board shall use reasonable efforts in any management contract to provide for termination of such contract by the Association with or without cause and without penalty, upon no more than thirty (30) days written notice. Any and all associations which are hereby subjected to the Declaration must use the same management agent as the Association.

**Section 3.18. Borrowing.** The Board of Directors shall have the power to borrow money for the purpose of maintenance, repair, restoration, or improvement of the Area of Common Responsibility, and for other purposes, with the approval of a majority of the Total Association Vote.

**Section 3.19. Liability and Indemnification of Officers, Directors and Committee Members.** The Association shall indemnify every officer, director, and committee member (including directors, officers, and committee members appointed by Declarant during the Declarant Control Period) against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon such officer, director or committee member in connection with any action, suit, or other proceeding (including settlement of any such action, suit, or proceeding, if approved by the then Board of Directors) to which he or she may be made a party by reason of being or having been an officer, director or committee member, whether or not such person is an officer, director or committee member at the time such expenses are incurred subject to the limitations below. The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, or for injury or damage caused by any such officer, director or committee member in the performance of his or her duties, except for his or her own individual willful misfeasance or malfeasance. The Association, in determining whether to indemnify a director, officer or committee member, shall not impute knowledge to said director, officer or committee member from any source whatsoever; rather, any such determination shall be based on the actual knowledge of the director, officer or committee member. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers, directors and committee members may also be members of the Association), and the Association shall indemnify and forever hold each such officer, director or committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director or committee member or former officer or director may be entitled. The Association shall maintain, as a Common Expense, adequate general liability and, if obtainable, officers' and directors' liability insurance to fund this obligation, and the insurance shall be written as provided in the Declaration.

**Section 3.20. Other Committees.** There shall be such other committees as the Board shall determine with the powers and duties that the Board shall authorize.

**Section 3.21. Service on Committees.** Unless otherwise provided in these Bylaws or in the resolution authorizing a particular committee, the members of any committee shall be appointed by the President and shall serve at the pleasure of the Board of Directors. Any committee member may be removed with or without cause at any time and with or without a successor being named.



#### ARTICLE 4. OFFICERS

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**Section 4.1. Designation.** The principal officers of the Association shall be the President, the Secretary and the Treasurer, all or any of which may be the same person. A Vice President may be elected at the discretion of the Board.

**Section 4.2. Election of Officers.** The Association officers shall be elected annually by the Board at the first Board meeting following each annual meeting of the members and shall hold office at the pleasure of the Board and until a successor is elected.

**Section 4.3. Removal of Officers.** Upon the affirmative vote of a majority of the members of the Board, any officer may be removed, either with or without cause, and a successor may be elected.

**Section 4.4. Vacancies.** A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board for the unexpired portion of the term.

**Section 4.5. President.** The President shall be the chief executive officer of the Association and shall preside at all meetings of the members and of the Board. 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, including, but not limited to, the power to appoint committees from among the members from time to time as he or she may in his or her discretion decide is appropriate to assist in the conduct of the affairs of the Association.

**Section 4.6. Vice President.** The Vice President, if any, shall act in the President's absence and shall have all powers, duties, and responsibilities provided for the President when so acting.

**Section 4.7. Secretary.** The Secretary shall keep the minutes of all meetings of the members 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 under Georgia law.

**Section 4.8. 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. The Treasurer shall be responsible for the preparation of the budget as provided in the Declaration. The Treasurer may delegate all or a part of the preparation and notification duties associated with the above responsibilities to a management agent.

**Section 4.9. Other Officers.** Other offices may be created by the Board, and the Board members that hold such offices shall have such titles and duties as are defined by the Board.

**Section 4.10. Agreements, Contracts, Deeds, Leases, Etc.** Except during the Declarant Control Period, all agreements, contracts, deeds, leases, checks, promissory notes, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by resolution of the Board of Directors. During the Declarant Control Period all agreements, contracts, deeds, leases, checks, promissory notes, and other instruments of the Association shall be executed by at least one (1) officer or by such other person or persons as may be designated by resolution of the Board of Directors.

#### ARTICLE 5. RULE MAKING AND ENFORCEMENT

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**Section 5.1. Authority and Enforcement.** The Community shall be used only for those uses and purposes set out in the Declaration. The Board of Directors shall have the authority to make, modify,



repeal and enforce reasonable rules and regulations governing the conduct, use, and enjoyment of Lots and the Common Property, provided that copies of all such rules and regulations shall be furnished to all Owners and Occupants. Any rule or regulation may be repealed by the affirmative vote or written consent of a majority of the Total Association Vote and the consent of the Declarant during the Declarant Control Period, at an annual or special meeting of the membership. Every Owner and Occupant shall comply with the Declaration, Bylaws and rules and regulations of the Association, and any lack of compliance therewith shall entitle the Association and, in an appropriate case, one (1) or more aggrieved Owners, to take action to enforce the terms of the Declaration, Bylaws or rules and regulations.

The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the Owner's Lot, and to suspend an Owner's right to vote or to use the Common Property for violation of any duty imposed under the Declaration, these Bylaws, or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Association or the Board to limit ingress and egress to or from a Lot. In the event that any Occupant of a Lot violates the Declaration, Bylaws, or a rule or regulation and a fine is imposed, notice of such violation shall be sent to the Owner and Occupant, and the fine shall first be assessed against such Occupant; provided, however, if the fine is not paid by the Occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Association, and the fine shall be an assessment and a lien against the Lot until paid. The failure of the Board to enforce any provision of the Declaration, Bylaws, or any rule or regulation shall not be deemed a waiver of the right of the Board to do so thereafter.

**Section 5.2. Fining and Suspension Procedure.** The Board shall not impose a fine, suspend the right to vote or suspend the right to use the Common Property (provided, however, if an Owner is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association, suspension of the right to vote and the right to use the Common Property shall be automatic) unless and until the Association has sent or delivered written notice to the violator as provided in subsection (a) below. Any such fine or fines may be effective or commence upon the sending of such notice or such later date as may be set forth in such notice, notwithstanding the violator's right to request a hearing before the Board to challenge such fine under subsection (b) below.

(a) Notice. If any provision of the Declaration or Bylaws or any rule or regulation of the Association is violated, the Board shall send the violator written notice identifying the violation and fine(s) being imposed and advising the violator of the right to request a hearing before the Board to contest the violation or fine(s) or to request reconsideration of the fine(s). Fine(s) may be effective or commence upon the sending of such notice or such later date specified in such notice, notwithstanding the violator's right to request a hearing before the Board to challenge the fine. In the event of a continuing violation, each day the violation continues or occurs again constitutes a separate offense, and fines may be imposed on a per diem basis without further notice to the violator.

(b) Hearing. If a written request for hearing is received from the violator within ten (10) days of the date of the violation notice provided above, then the Board shall schedule and hold in executive session a hearing affording the violator a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing. The Board may establish rules of conduct for such hearing, which may include limits on time and on the number of participants who may be present at one time.

**Section 5.3. Additional Enforcement Rights.** Notwithstanding anything to the contrary herein contained, the Board may elect to enforce any provision of the Declaration, these Bylaws, or the rules and regulations by self-help (specifically including, but not limited to, or performing maintenance on any Lot upon a failure by the Owner to so do) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity for compliance with the procedure set forth in Section 5.2 above. In any such action, to the maximum extent permissible, the Owner or Occupant responsible for the violation for which abatement is sought shall pay all costs, including reasonable attorneys' fees actually incurred.



The Association or its duly authorized agent shall have the power to enter a Lot or upon 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 the Declaration, these Bylaws, or the rules and regulations; provided, however, written notice shall be given to the Owner of the Lot at least two (2) days prior to the time that any items of construction are altered or demolished. All costs of self-help, including reasonable attorneys' fees, shall be assessed against the violating Owner and shall be collected as provided herein for the collection of assessments.

## **ARTICLE 6. MISCELLANEOUS**

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### **Section 6.1. Notices.**

(a) Method of Giving Notice. Unless otherwise prohibited in these Bylaws, all notices, demands, bills, statements, or other communications shall be in writing and shall be given via:

- (i) Personal delivery to the addressee; or
- (ii) United States mail, first class, postage prepaid; or
- (iii) Electronic mail; or
- (iv) Facsimile; or
- (v) A secure web site, provided that notice shall be deemed given via web site only upon proof that the addressee has retrieved the message.

(b) Addressee. Notice sent by one of the methods described in subsection (a) above shall be deemed to have been duly given:

- (i) If to an Owner, at the address, electronic mail address or facsimile number which the Owner has designated in writing and filed with the Secretary, or if no such address has been designated, at the address of the Lot of such Owner;
- (ii) If to an Occupant, at the address, electronic mail address or facsimile number which the Occupant has designated in writing with the Secretary or, if no such address has been designated, at the address of the Lot occupied; or
- (iii) If to the Association, the Board or the managing agent, at the postal address, facsimile or electronic mail address of the principal office of the Association or the managing agent, if any, or at such other address as shall be designated in writing and filed with the Secretary. The Secretary shall promptly provide notice to all Owners of any such change in address.

**Section 6.2. Severability.** The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these Bylaws or the Declaration.

**Section 6.3. Captions.** The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of these Bylaws or the intent of any provision thereof.

**Section 6.4. Gender and Grammar.** The use of the masculine gender in these Bylaws shall be deemed to include the feminine gender, and the use of the singular shall be deemed to include the plural whenever the context so requires.



**Section 6.5. Fiscal Year.** The fiscal year of the Association may be set by Board resolution, and, in the absence thereof, shall be the calendar year.

**Section 6.6. Financial Review.** A financial review of the accounts of the Association shall be performed annually in the manner provided by the Board and a financial statement prepared. However, after having received the Board's financial statement review at the annual meeting, the Owners may, by a majority of the Total Association Vote, require that the accounts of the Association be audited as a Common Expense by an independent accountant. Such statement shall be made available to the holder, insurer, or guarantor of any first mortgage on a Lot upon submission of a written request and must be available within one hundred twenty (120) days of the Association's fiscal year end. If an audited financial statement by an independent accountant is not required, a mortgage holder may have an audited statement prepared at its own expense.

**Section 6.7. Conflicts.** The duties and powers of the Association shall be those set forth in the Georgia Nonprofit Corporation Code, the Declaration, these Bylaws, and the Articles of Incorporation, together with those reasonably implied to affect the purposes of the Association; provided, however, that if there are conflicts or inconsistencies between the Georgia Nonprofit Corporation Code, the Declaration, these Bylaws, or the Articles of Incorporation, then the provisions of the Georgia Nonprofit Corporation Code, as may be applicable, the Declaration, the Articles of Incorporation and these Bylaws, in that order, shall prevail, and each Owner of a Lot, by acceptance of a deed or other conveyance therefor, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies.

**Section 6.8. Amendment.** These Bylaws may be amended as provided in Section 15 of the Declaration.

**Section 6.9. Books and Records.**

(a) Right to Inspect. All members of the Association and any holder of a first Mortgage shall be entitled to inspect the following records at a reasonable time and location specified by the Association, upon written request at least five (5) business days before the date on which the member or Mortgagee wishes to inspect and copy:

- (i) its Articles or restated Articles of Incorporation and all amendments to them currently in effect;
- (ii) its Bylaws or restated Bylaws and all amendments to them currently in effect;
- (iii) resolutions adopted by either its members or Board of Directors increasing or decreasing the number of directors or the classification of directors, or relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;
- (iv) the minutes of all meetings of members and records of all actions approved by the members for the past three (3) years;
- (v) all written communications to members generally within the past three (3) years, including the financial statements furnished for the past three (3) years;
- (vi) a list of the names and business or home addresses of its current directors and officers; and
- (vii) its most recent annual report delivered to the Georgia Secretary of State.

(b) Inspection. A member may inspect and copy the following records upon written notice at least five (5) business days before the date on which the member wishes to inspect and copy only if the



member's demand is made in good faith and for a proper purpose that is reasonably relevant to the member's legitimate interest as a member; the member describes with reasonable particularity the purpose and the records the member desires to inspect; the records are directly connected with this purpose; and the records are to be used only for the stated purpose:

(i) excerpts from minutes of any Board meeting, records of any action of a committee of the Board while acting in place of the Board on behalf of the Association, minutes of any meeting of the members, and records of action taken by the members or the Board without a meeting, to the extent not subject to inspection under Section 6.9(a) above;

(ii) accounting records of the Association; and

(iii) the membership list only if for a purpose related to the member's interest as a member. Without the consent of the Board, a membership list or any part thereof may not be: used to solicit money or property unless such money or property will be used solely to solicit the votes of the members in an election to be held by the Association; used for any commercial purpose; or sold to or purchased by any person.

The Association may impose a reasonable charge, covering the cost of labor and material, for copies of any documents provided to the Member.

Notwithstanding anything to the contrary, the Board may limit or preclude member inspection of confidential or privileged documents, including attorney/client privileged communications, executive session meeting minutes, and financial records or accounts of other members. Minutes for any Board or Association meetings do not become effective and an official Association record until approved by the Board or Association membership, as applicable, at a subsequent meeting.



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RICHARD ALEXANDER, CLERK

**Return to:**

Weissman, Nowack, Curry & Wilco, P.C.  
One Alliance Center, 4<sup>th</sup> Floor  
3500 Lenox Road  
Atlanta, Georgia 30326  
Attention: Samuel Feldman, Esq.

**Cross-reference to Deed to Secure Debt:**

Deed Book 53822, Page 470

**MORTGAGEE CONSENT, APPROVAL AND SUBORDINATION**

Bank of North Georgia, a division of Synovus Bank ("Mortgagee"), being the owner and holder of a Deed to Secure Debt, Security Agreement and Fixture Filing recorded in Deed Book 53822, Page 470, Gwinnett County, Georgia records (the "Security Instrument") hereby approves that certain Declaration of Covenants, Conditions, Restrictions and Easements for Shadowbrook Crossing (the "Declaration") which is to be recorded with this Mortgagee Consent.

FURTHERMORE, Mortgagee does hereby expressly subordinate to the Declaration all right, title, interest and lien of the undersigned created under and by virtue of the Security Instrument with respect to the property described in and subject to the Declaration or hereafter made subject to the Declaration in accordance with the terms thereof. Except as set forth herein, the Security Instrument shall otherwise remain in full force and effect and shall not be subordinated to any other lien or encumbrance.

IN WITNESS WHEREOF, the undersigned has executed this Mortgagee Consent, Approval and Subordination this 20<sup>th</sup> day of November, 2015.

**MORTGAGEE:**

**Bank of North Georgia, a division of Synovus Bank**

By: *[Signature]*  
Title: Senior Vice President

[BANK SEAL]

Signed, sealed, and delivered  
this 20<sup>th</sup> day of November, 2015.

*[Signature]*  
Witness

*[Signature]*

Notary Public

By: *[Signature]*  
Angela M Wolinsky  
Bank Officer

My Commission Expires: 10-11-19

[NOTARY SEAL]

