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MASTER DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR  
SOUTH ON MAIN

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

MASTER DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS

FOR  
SOUTH ON MAIN

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MASTER DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS

FOR

SOUTH ON MAIN

THIS DECLARATION is made on the date hereinafter set forth by **BREEZY HILL  
LAND, LLC**, a Georgia limited liability company (hereinafter sometimes called "Declarant").

W I T N E S S E T H

WHEREAS, Declarant is the owner, or if not the owner has the consent of the owner, of the real property described in Exhibit "A" hereof; and

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

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

Article 1  
Definitions

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

1.1 "Approved Builder" means any affiliated entity of Declarant and any home builder approved by Declarant for the construction of houses on a Unit which home builder has been granted rights of Approved Builder hereunder by the Declarant in a written instrument. Declarant may grant rights of Approved Builder to one or several home builders. Rights of

Approved Builder hereunder shall apply only to the Units which are acquired by that Approved Builder.

1.2 "Articles of Incorporation" means the Articles of Incorporation of South on Main Community Association, Inc., filed with the Georgia Secretary of State and incorporated herein by this reference as may be amended from time to time.

1.3 "Association" means South on Main Community Association, Inc., a Georgia nonprofit corporation, its successors and assigns.

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

1.5 "Bylaws" means the Bylaws of South on Main Community Association, Inc., attached to this Declaration as Exhibit "C" and incorporated herein by this reference as may be amended from time to time.

1.6 "Commercial Unit" means any portion of the Development which may be independently owned which is zoned and used for office, retail or general commercial use under the Land Development Code of the City of Woodstock, Georgia or other local or governmental ordinances applicable to the Development. A Commercial Unit may include a condominium unit intended for independent ownership created pursuant to a declaration of condominium under O.C.G.A. 44-3-70, *et seq.* so that after the filing of said declaration of condominium each condominium unit would become a separate Commercial Unit.

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

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

1.9 "Declarant" means **BREEZY HILL LAND, LLC**, a Georgia limited liability company, and its successors-in-title and assigns; provided that in a recorded instrument, such successor-in-title or assignee is designated as the Declarant hereunder by the holder of all of the rights of Declarant hereunder; and, provided, further, upon the effective date of the designation of a successor Declarant, all rights of the former Declarant in and to such status as Declarant

hereunder shall cease, it being understood that there shall be only one holder of the rights of Declarant hereunder at any one point in time.

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

1.11 "Development" refers to that certain real property described in Exhibit "A", attached hereto, and such additions thereto as may be made by Supplementary Declaration as provided herein, and less and except any property that may be removed from the Development as provided herein.

1.12 "Development - Wide Standard" means the standard of conduct, maintenance or other activity generally prevailing in the Development. Such standard may be more specifically determined by the Board of Directors of the Association. Such determination, however, must be consistent with the Development-Wide Standard originally established by the Declarant.

1.13 "Limited Common Property" means a portion of the Development whether owned by Declarant or Approved Builder and/or now or hereafter conveyed to the Association as Common Property, reserved for the benefit and exclusive use of one or more Units, as may be more particularly described in a recorded document applicable to such Unit(s) or on the recorded subdivision plat(s) for the Development and may be designated as "Exclusive Common Property", "Limited Common Property", "Limited Common Area" or any similar term or may be designated as such in a recorded document applicable to one or more specific Units in the Development.

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

1.15 "Mortgagee" means the holder of a Mortgage.

1.16 "Mixed Use Unit" means a Townhome Unit, Condominium Unit or Commercial Unit located in the Development which is zoned and may be used for residential and/or commercial use under the Land Development Code of the City of Woodstock, Georgia or other local or governmental ordinances applicable to the Development.

1.17 "Neighborhood" means a separately developed and denominated residential or commercial area within the Development which has been so designated on Exhibit "A" hereof or in one or more Supplementary Declarations in which the Owners of certain Units may have common interests other than those common to all members of the Association. By way of

illustration and not limitation, a townhouse development, commercial or residential condominium, or other residential development might each be designated as a separate Neighborhood. The Declarant shall have the right to designate separate Neighborhood status and change the Neighborhood status of any previously designated Neighborhood for any property in the Development. A Neighborhood may, but is not required to, have a separate incorporated mandatory membership Neighborhood Association and may be subject to a Neighborhood Declaration.

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

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

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

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

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

1.23 "Residential Unit" means a Detached Residential Unit, Townhome Unit or Condominium Unit located in the Development which is zoned and used exclusively for residential use under the Land Development Code of the City of Woodstock, Georgia or other local or governmental ordinances applicable to the Development.

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

1.25 "Total Association Vote" means the votes attributable to the entire membership of the Association (including the votes of the Declarant) as of the record date for such action, but specifically excluding the votes of those Owners whose voting rights have been suspended as provided herein, whether or not such members are present or represented at the meeting, if any, where such votes are to be cast. If, for example, and without limitation, a majority of the Total Association Vote is required to approve a matter, such matter must receive more than half of the votes attributable to all existing members of the Association as of the record date for such action, (and excluding the votes of any Owners whose voting rights have been suspended as provided

herein) whether or not such members are present or represented at the meeting, if any, where such votes are to be cast. As a further illustration, if a majority vote is required to approve a matter (and the term Total Association Vote is not used), such matter must receive more than half of the votes cast by the members present and entitled to vote on the matter.

1.26 "Townhome Unit" shall mean any plot of land within the Development, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single dwelling site for a townhome or paired home which will be attached by one or more party walls to another townhome or paired home. Where the dwelling on a Townhome Unit is attached by a party wall to one or more other dwellings, the boundary between Townhome Units shall be a line running along the center of the party wall separating the Townhome Units. The ownership of each Townhome Unit shall include the exclusive right to use and possession of any and all portions of the heating and air conditioning units which are appurtenant to and serve each Townhome Unit (including, but not limited to, compressors, conduits, wires and pipes) and any driveway, walkway, porch, deck, balcony, courtyard, patio, steps, wall, roof, foundation, sunroom or any similar appurtenance as may be attached to a Townhome Unit when such Townhome Unit is initially constructed. The ownership of each Townhome Unit shall include, and there shall automatically pass with the title to each Townhome Unit as an appurtenance thereto, whether or not separately described, membership in the Association and all of the rights and interest of an Owner in the Common Property, as herein provided.

1.27 "Unit" means any plot of land within the Development, whether or not improvements are constructed thereon, which constitutes a Commercial Unit, Condominium Unit, Detached Residential Unit, Mixed Use Unit or Townhome Unit as defined herein and as shown on a plat recorded in the Office of the Clerk of Superior Court of Cherokee County, Georgia, but specifically excludes any portion of the Common Property or any property owned by a Neighborhood Association, if any. The ownership of each Unit shall include, and there shall automatically pass with the title to each Unit as an appurtenance thereto membership in the Association and all rights and interest of an Owner in the Common Property as provided herein.

## Article 2

### Property Subject To This Declaration

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

2.2 Unilateral Annexation By Declarant. As the owner thereof or, if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option from time to time at any time until Declarant no longer owns any property shown on Declarant's land plan for the development to subject all or any portion of the real property described in Exhibit "B" attached hereto and by this reference incorporated herein, to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the Office of the Clerk

of Superior Court of Cherokee County, Georgia a Supplementary Declaration describing the property being subjected. Declarant intends to annex hereto the property contained in Declarant's land plan for the development, as amended from time to time, which property is a portion of the property described in Exhibit "B". However, inclusion of property on Declarant's land plan or in Exhibit "B" shall not obligate the Declarant to subject such property to the Declaration. Exclusion of property from the initial land plan shall not bar Declarant from subjecting such property to the Declaration. Any annexation shall be effective upon the filing for record of a Supplementary Declaration unless a later effective date is provided therein. As long as covenants applicable to the real property previously subjected to this Declaration are not changed and as long as rights of existing Owners are not materially adversely affected, the Declarant may amend this Declaration to reflect the different character of any such annexed real property. If any land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

2.3 Additional Covenants, Restrictions and Easements. No Person shall record any declaration of covenants, conditions and restrictions, declaration of condominium, easements, or similar instrument against any property within the Development without the review and written consent of Declarant, which consent may be withheld in the sole discretion of the Declarant. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Cherokee County, Georgia land records. No such instrument recorded by any Person, other than the Declarant pursuant to this Section, may conflict with the Declaration, Bylaws or Articles.

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

2.5 Withdrawal of Property. Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant to this Article for the purpose of removing any portion of the Development 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 Development, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Development. Any such withdrawal shall be accomplished by filing an amendment to this Declaration describing the property removed and such amendment shall be effective upon filing for record in the Office of the Clerk of Superior Court of Cherokee County, Georgia unless a later effective

date is provided therein. Such amendment shall be executed by the Declarant and the Owner(s) of the property being removed and shall not require the vote or consent of any other Person.

### Article 3 Association Membership and Voting Rights

3.1 Membership. Every Person who is the record owner of a fee or undivided fee interest in any Unit subject to this Declaration shall have a membership in the Association. The foregoing is not intended to include Mortgagees and the conveyance of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one membership per Unit. Membership shall be appurtenant to and may not be separated from ownership of a Unit. The rights and privileges of membership, including the right to hold office, may be exercised by a member or the designee of a member, but in no event shall more than one office be held for each Unit owned. This Section is not intended to prohibit the same individual from being both an officer and a director of the Association. Nothing in this Section shall restrict the number of votes cast or the number of the officers and directors appointed by the Declarant.

3.2 Voting. If there is more than one Owner of a Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one Person or Owner seeks to exercise it. The Board of Directors may suspend the voting rights of an Owner for any period during which any past due assessment against any Unit of the Owner remains unpaid; and for a reasonable period of time for an infraction of the Declaration, Bylaws or rules and regulations.

3.3 Allocation of Votes. In any matter coming before the members for a vote, members shall be entitled to cast the number of votes appertaining to the Unit computed in accordance with the formula set forth below. All votes shall be allocated in accordance with this formula and neither this Declaration, the Articles of Incorporation nor the Bylaws shall be construed as creating equal voting rights. The Owner of a Residential Unit or Mixed Use Unit shall be entitled to one (1) vote for each Unit owned. The Owner of a Commercial Unit shall be entitled to one (1) vote for every one thousand (1,000) square feet (rounded to the nearest one hundred (100) square feet) of gross floor area of the Commercial Unit. The term "gross floor area" shall mean the sum of all floors of a structure as measured to the outside surfaces of exterior walls or the center of connected or common walls, including common public areas, such as lobbies, rest rooms and hallways, spaces devoted exclusively to permanent mechanical systems, permanent storage areas, stairwells, elevator shafts, but excluding internal parking and loading areas, attics, porches, balconies and any areas outside of the exterior walls of the building.

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



Article 4  
Assessments

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

4.2 Creation of the Lien and Personal Obligation for Assessments. Each Owner of a Unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) general assessments; (b) Neighborhood assessments, if applicable; (c) special assessments; (d) specific assessments; and (e) the Recreational Amenity Assessment, if applicable. All assessments, together with late charges (in an amount equal to the greater of Ten and No/100 Dollars (\$10.00) or ten percent (10%) of the amount of the assessment or installment not paid when due), interest (at a rate set by the Board of Directors from time to time, but not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum on the principal amount due) and costs of collection, including, without limitation, reasonable attorney's fees actually incurred, shall, from the time the sums become due and payable, be a charge on the land and a continuing lien in favor of the Association on the Unit against which each assessment is made. As provided in O.C.G.A. Section 44-5-60(e), the obligation for the payment of assessments and fees arising hereunder shall include costs of collection, including, without limitation, reasonable attorney's fees actually incurred, and the award of attorneys' fees shall not be construed in accordance with the provisions of O.C.G.A. Section 13-1-11(a)(2). All payments shall be applied first to costs, then to late charges, then to interest and then to delinquent assessments.

The recording of this Declaration shall constitute record notice of the existence of the lien and no further recordation of any claim of lien shall be required. Each such assessment, together with such late charges, interest and costs of collection, including, without limitation, reasonable attorneys' fees actually incurred, shall also be the personal obligation of the Person who was the Owner of the Unit at the time the assessment fell due. Each Owner shall be personally liable for the portion of each assessment coming due while the Owner of a Unit and each grantee of an Owner shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of the grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings. No Owner may waive or otherwise be exempt from liability for the assessments provided for herein, including, by way of illustration, but not limitation, the following: (a) abandonment of the Unit; (b) nonuse of the Common Property; (c) for a Residential Unit Owner or Mixed Use Unit Owner, nonuse of the recreational facilities serving the Development; (d) the Association's failure to perform its obligations required under the Declaration; or (e) inconvenience or discomfort arising out of the Association's performance of its duties. No diminution or abatement of any assessment shall be claimed or allowed by reason of any failure of the Association to take some action or perform some function required to be taken or performed by

the Association, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

4.3 Operating Budget. It shall be the duty of the Board to prepare a general budget covering the estimated costs of operating the Association during the coming year; provided, however, the Board of Directors shall prepare a separate budget for the costs associated with the maintenance and operation of the recreational facilities serving the Development, including, without limitation, the cost of insurance for said recreational facilities ("Recreational Amenity Budget") as provided below. The Board shall cause the general budget and the assessments to be levied for the year to be delivered to each member at least thirty (30) days prior to the due date of any general assessment. The general budget and general assessment shall become effective unless disapproved at a meeting by a majority of the Total Association Vote and the Declarant. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed general budget or the Board fails for any reason to determine the budget for any period, then and until such time as a budget shall have been determined, as provided herein, the budget in effect shall continue. General assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors, which may include, without limitation, acceleration, upon ten (10) days written notice for delinquents. Unless otherwise provided by the Board, the general assessment shall be paid in one annual installment.

The Recreational Amenity Budget shall be divided among the Residential Unit Owners and Mixed Use Unit Owners in the Development equally as more particularly provided in Section 4.6 below ("the Recreational Amenity Assessment"). Only Residential Unit Owners and Mixed Use Unit Owners shall have the right to use and enjoy the recreational facilities serving the Development. Commercial Unit Owners shall not pay any expenses allocated in the Recreational Amenity Budget and as a result shall not be entitled to use and enjoy the recreational facilities serving the Development. The Board shall deliver the Recreational Amenity Budget to the Residential Unit Owners and Mixed Use Unit Owners at the same time the general budget is delivered to all Unit Owners in the Development. The Recreational Amenity Budget shall become effective unless disapproved by a majority vote of the Residential Unit Owners, Mixed Use Unit Owners and the Declarant. Notwithstanding the foregoing, however, in the event the Residential Unit Owners and Mixed Use Unit Owners disapprove the proposed Recreational Amenity Budget or the Board fails for any reason to determine the Recreational Amenity Budget for any period, then and until such time as a Recreational Amenity Budget has been determined, the Recreational Amenity Budget in effect shall continue.

4.4 General Assessments. General assessments include any sums the Board determines necessary for the continued ownership, operation and maintenance of the Common Property, operating expenses of the Association, payment for any items of betterment and the establishment of reserve funds as the Board shall deem proper. General assessments may include, without limitation, the following: (a) sums for property taxes for the Common Property; (b) insurance premiums; (c) legal and accounting fees; (d) management fees; (e) charges for utilities and other services provided by the Association, if any; (f) costs to maintain the Development entry features, including any electricity, landscaping and irrigation expenses associated therewith; (g) costs associated with the maintenance of the storm water detention/retention pond(s) and storm water drainage facilities serving the Development; (h)

costs to maintain the private streets and sidewalks in the Development; and (i) expenses and liabilities incurred as provided herein and in the Articles of Incorporation and Bylaws for indemnification of officers and directors and in connection with the enforcement of rights and duties of the Association against Owners and others. General assessments shall be levied on all Units pro rata based on the total votes attributable to such Unit under Section 3.3 hereof.

4.5 Neighborhood Assessments. The Association may levy assessments against the property in a particular Neighborhood to fund actual and estimated expenses incurred by the Association for the primary benefit of property within such Neighborhood, including without limitation, maintenance required to be performed by the Association with respect to property within such Neighborhood. Neighborhood assessments shall be levied as specifically budgeted from time to time by the Board of Directors pursuant to this Declaration. In addition, the Board shall levy a Neighborhood assessment upon the request of the Owners holding two-thirds (2/3) of the Total Association Vote applicable to Units within a Neighborhood. Any costs and expenses incurred in connection with insurance of the Townhome Units as provided in Section 9.5 hereof, the maintenance, repair and replacement to the Townhome Units as provided in Section 8.2 hereof, and any landscaping performed to the Townhome Units as provided in Section 8.3 hereof shall be a Neighborhood Assessment applicable to all Townhome Units in the Development.

4.6 Recreational Amenity Assessments. The Association may levy assessments against the Residential Units and Mixed Use Units in the Development to fund actual and estimated expenses incurred pursuant to the Recreational Amenity Budget, as set forth in Section 4.3 above. The Recreational Amenity Assessment shall include any sums the Board determines necessary for the continued ownership, operation, maintenance, repair and replacement of the recreational facilities serving the Development. The Recreational Amenity Assessment shall be paid in such manner and on such dates as may be fixed by the Board of Directors. Nonuse of the recreational facilities by a Residential Unit Owner or Occupant or a Mixed Use Unit Owner or Occupant shall not constitute waiver or exemption from liability for payment of a portion of the Recreational Amenity Assessment as provided herein. In the event that a Mixed Use Unit is not occupied or used for residential purposes, the Owner may so notify the Board of Directors and receive a waiver of the Recreational Amenity Assessment. During any active waiver period, the Owner or Occupants of a Mixed Use Unit used solely for commercial purposes shall have no right to use the recreational amenities and shall not be liable for the Recreational Amenity Assessment.

4.7 Special Assessments. The Association, acting through the Board of Directors may levy a special assessment if approved by two-thirds (2/3) of the Total Association Vote and consent of the Declarant; provided, however, so long as the total amount of special assessments allocable to each Unit does not exceed the amount of the annual general assessment in any such fiscal year, the Board of Directors may impose the special assessment without a vote of the members. The Association may also levy a special assessment applicable to the Residential Unit Owners and Mixed Use Unit Owners to fund expenses not contemplated by the Recreational Amenity Budget if approved by two-thirds (2/3) of the Total Association Vote applicable to the Residential Units and Mixed Use Units; provided, however, so long as the total amount of special assessments allocable to each Residential Unit and Mixed Use Unit does not exceed the amount of the Recreational Amenity Assessment in effect for any such fiscal year, the Board of

Directors may impose the special assessment without a vote of the members. Special assessments shall be paid as determined by the Board. The Board may permit a special assessment to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

**4.8 Specific Assessments.** The Board shall have the power to levy specific assessments as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. By way of explanation and not limitation, the following shall constitute specific assessments (a) fines levied pursuant to this Declaration; (b) the initiation fee as provided in Section 4.15; (c) the cost of maintenance performed by the Association for which an Owner is responsible; and (d) the cost of providing services to a Unit, if any.

In addition to the foregoing, the Board of Directors may also specifically assess Owners for Association expenses as follows: (a) expenses of the Association which benefit less than all of the Units may be specifically assessed equitably among all of the Units which are benefited according to the benefit received; (b) expenses of the Association which benefit all Units, but do not provide an equal benefit to all Units, may be specifically assessed equitably among all Units according to the benefit received; and (c) expenses of the Association which are attributable to or incurred as a result of the conduct of an Owner or the Occupants, tenants, guests or invitees of an Owner may be specifically assessed against the Unit of such Owner.

**4.9 Subordination of Liens to Mortgages.** Notwithstanding anything to the contrary in this Declaration or any other document related thereto or executed in connection therewith, the lien of all assessments authorized herein is hereby made subordinate to the lien of any first Mortgage placed on a Unit, if, but only if, all assessments and charges with respect to such Unit authorized herein having a due date on or prior to the date of the Mortgage as filed of record have been paid. The lien hereby subordinated is only such lien as relates to assessments and charges authorized hereunder having a due date subsequent to the date such Mortgage is filed of record and prior to the foreclosure of such Mortgage. Such subordination is merely a subordination and shall not relieve an Owner of the personal obligation to pay all assessments coming due during such period of ownership; shall not relieve such Unit from the lien provided for herein (except to the extent a subordinated lien is extinguished as a result of such subordination as against a Mortgagee or such Mortgagee's transferee by foreclosure); and no sale or transfer of such Unit to the Mortgagee or to any other Person pursuant to a foreclosure, or pursuant to any other proceeding in lieu of foreclosure, shall relieve any existing or previous Owner of such Unit of any personal obligation or relieve such Unit or any Owner of such Unit from liability for any assessment authorized hereunder that becomes due after such sale and transfer.

**4.10 Remedies of the Association.** Any assessments or installments thereof which are not paid when due shall be delinquent. In addition to the lien rights granted herein, the personal obligation of the then Owner to pay such assessments shall remain such Owner's personal obligation and shall also pass to such Owner's successors-in-title. Such Owner shall nevertheless

remain as fully obligated as before to pay to the Association any and all amounts which such Owner was obligated to pay immediately preceding the transfer or conveyance; and such Owner and such successors-in-title shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such Owner and such successors-in-title creating any indemnification of the Owner or any relationship of principal and surety as between themselves. Any assessment or installment thereof delinquent for a period of more than ten (10) days shall incur a late charge (in an amount equal to the greater of Ten and No/100 Dollars (\$10.00) or ten percent (10%) of the assessment or installment not paid when due) and interest (at a rate set by the Board of Directors from time to time, but not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum on the principal amount due). As provided in O.C.G.A. Section 44-5-60(e), the obligation for the payment of assessments and fees arising hereunder shall include costs of collection, including, without limitation, reasonable attorney's fees actually incurred, and the award of attorneys' fees shall not be construed in accordance with the provisions of O.C.G.A. Section 13-1-11(a)(2).

The Association may cause a notice of delinquency to be given to any Owner who has not paid within ten (10) days following the due date. In the event that the assessment remains unpaid after sixty (60) days, the Association may institute suit to collect such amounts and/or to foreclose its lien. The Association may file a notice of its claim of lien with the Office of the Clerk of Superior Court of Cherokee County, Georgia, but no such claim of lien shall be required to establish or perfect the lien for unpaid assessments contained in this Declaration. Each Owner, by acceptance of a deed, vests in the Association the right and power to bring all actions against such Owner personally for the collection of such charges as a debt or to foreclose the lien. The lien provided for in this Declaration shall be in favor of the Association and shall be for the benefit of all Owners. The Association shall have the power to bid on any property within the Development at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. The Association may also suspend, without further notice or hearing, the membership rights of the delinquent Owner, including the right to vote, the right of enjoyment in and to the Common Property, and for a Residential Unit Owner or Mixed Use Unit Owner the right to use and enjoy the recreational facilities serving the Development, and the right to receive and enjoy such services and other benefits as may then be provided by the Association. Any such suspension shall not affect such member's obligation to pay assessments coming due during the period of such suspension and shall not affect the permanent lien on such property in favor of the Association.

4.11 Date of Commencement of Assessments. Assessments shall commence in general when the Board of Directors first determines a general budget and levies assessments. The assessments provided for herein shall commence as to a Unit on the first to occur of the date that the Unit is first occupied for residential or commercial purposes; or is conveyed by Declarant or Approved Builder to an Owner who is not an Approved Builder or successor Declarant. A Unit shall be deemed to be occupied for residential or commercial purposes when a certificate of occupancy has been issued by the applicable governmental authority and it has been occupied for residential or commercial use. Any Unit which has been approved by Declarant for use as a model home for marketing and sales purposes shall not be deemed to be occupied for residential or commercial purposes and shall not be subject to assessments under this Declaration whether

owned by Declarant, Approved Builder or any other Person, so long as such Unit is approved for use as a model home and is not occupied for residential or commercial purposes.

4.12 Budget Deficits During Declarant Control. For so long as the Declarant has the authority to appoint the directors and officers of the Association, Declarant may, but shall have no obligation to advance funds or contributions of services or materials or a combination of services and material, rather than money (herein collectively called "in kind contribution"), or a combination of these, to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for capital reserves), and the sum of the general, Neighborhood, special and specific assessments collected by the Association in any fiscal year (such advances shall be evidenced by promissory notes from the Association in favor of the Declarant). No Mortgage secured by the Common Property shall be given in connection with such loan.

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

4.14 Estoppel Letter. Any Owner, Mortgagee, or a Person having executed a contract for the purchase of a Unit, or a lender considering a loan to be secured by a Unit, shall be entitled, upon written request, to a statement from the Association or its managing agent setting forth the amount of assessments past due and unpaid, including any late charges, interest, fines, or other charges against that Unit. Such request shall be delivered to the registered office of the Association, and shall state an address to which the statement is to be directed. The Association shall, within five (5) business days after receiving a written request therefor, certify to the amount of any unpaid assessments constituting a lien on a specified Unit. The Association may charge a reasonable fee as may be permitted by law as a prerequisite to the issuance of such statement. A certification letter signed by an officer of the Association or the Association's managing agent, if any, as to the amount of assessments due with respect to a Unit shall be binding upon the Association. It is the intent of this provision to comply with O.C.G.A. Section 44-14-15(c), as amended.

4.15 Initiation Fee. Upon the sale of every Unit after it has been conveyed by Declarant to an Owner who is not a builder, Approved Builder or successor Declarant, an initiation fee in an amount determined by the Board from time to time, but not to exceed the amount of the general assessment applicable to the Unit for the year of such conveyance, shall be collected from the purchaser at the closing of such transaction and paid to the Association; or if not collected at closing, immediately upon demand by the Association. The initiation fee shall constitute a specific assessment against the Unit, shall be in addition to, not in lieu of, the annual general assessment and shall not be considered an advance payment of such assessment. The initiation fee may be used by the Association for any purpose which provides a direct benefit to the Development, including, without limitation, for the payment of operating expenses of the Association and other expenses incurred by the Association pursuant to the provisions of this Declaration. This specific

assessment shall not apply to the holder of any first Mortgage on a Unit who becomes the Owner of a Unit through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage, but shall apply to the Owner acquiring the Unit from the foreclosing Mortgagee.

4.16 Neighborhood Associations. In the event a Neighborhood Association is established pursuant to a Neighborhood Declaration and if directed in writing by the Board of Directors to do so, the Neighborhood Association shall collect the general assessment, special assessment, specific assessment and Recreational Amenity Assessment, if applicable, due from Owners of Units within a particular Neighborhood and pay all such assessments collected to the Association prior to the due date thereof. If directed by the Board of Directors, each Neighborhood Association shall include each assessment of the Association as a separate line item in the annual budget of the Neighborhood Association and shall pay all such general assessments collected to the Association in full within ten (10) days after receipt, together with any interest due for late payment and without deductions of any kind. All costs of collection of amounts required to be collected by the Neighborhood Association hereunder shall be borne by the Neighborhood Association to the extent not collected from the defaulting Unit Owner.

## Article 5

### Maintenance; Common Property

5.1 Association's Responsibility. The Association shall maintain and keep in good repair the Common Property, which shall include, without limitation, the maintenance, repair and replacement of all landscaping, structures and improvements located thereon. The Association shall also maintain (whether or not constituting Common Property) the following: (a) the storm water detention/retention ponds and storm water drainage facilities serving the Development, regardless of whether said storm water retention/detention ponds are located on a Unit or Common Property, if and to the extent the same are not maintained by a governmental entity or a Neighborhood Association pursuant to a Neighborhood Declaration; provided, however, each Owner of a Unit, and not the Association, shall be responsible for the maintenance, repair and replacement of all storm water drainage facilities which exclusively serve such Unit; (b) all Development entry features, including, without limitation, any landscaping associated therewith and any irrigation system and/or lighting system providing water and/or electricity to such entry features, regardless of whether such entry features and related landscaping are located on a Unit, Common Property or public right-of-way; (c) the recreational facilities serving the Development; provided however the costs associated with the maintenance and operation of said recreational facilities shall be assessed only against the Residential Unit Owners and Mixed Use Unit Owners as part of the Recreational Amenity Assessment as provided in Section 4.3 hereof; (d) the centralized mailbox area and the mailboxes located thereon; (e) all Development open space and green space; (f) the private Development streets, sidewalks, street signs and any street medians and islands located within such private streets, and the multi-use trail located within the Development, if and to the extent the trail system is not maintained by a governmental entity or other third party; (g) the exterior surfaces of all dwellings located on a Townhome Unit, as provided in Section 8.2 hereof, if and to the extent the same are not maintained by a Neighborhood Association pursuant to a Neighborhood Declaration; (h) the Development dog park; and (i) landscaping and lawn maintenance surrounding the Townhome Units as provided in

Section 8.3 hereof, if and to the extent the same are not maintained by a Neighborhood Association pursuant to a Neighborhood Declaration.

In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association, regardless of whether such property is located within or outside of the Development, where the Board has determined that such action would benefit the Owners. In addition to the foregoing, the Board, with the consent of the Declarant and without the consent of the members, may enter into easements and covenant to share cost agreements where the Board has determined that such action would benefit the Owners. The Board of Directors may authorize the officers of the Association to enter into contracts with any Person or Persons to perform maintenance hereunder on behalf of the Association. In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, or the Occupants, family, guests, lessees or invitees of an Owner, then the Association may perform such maintenance, repair or replacement and all costs thereof, not paid for by insurance, shall be assessed against the Unit of such Owner as a specific assessment. All maintenance by the Association shall be performed consistent with the Development-Wide Standard.

#### 5.2 Owner's Responsibility.

(a) General. Except for maintenance performed on a Unit by the Association pursuant to Sections 5.1, 8.2 and 8.3 hereof or maintenance performed by a Neighborhood Association pursuant to a Neighborhood Declaration, if any, all maintenance of the Unit and all structures, landscaping, and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Unit in a manner consistent with the Development-Wide Standard and this Declaration. Such maintenance obligation shall include, without limitation, the following: (i) prompt removal of all litter, trash, refuse, and waste; (ii) lawn mowing on a regular basis; (iii) tree and shrub pruning; (iv) watering landscaped areas; (v) keeping improvements, and exterior lighting in good repair and working order; (vi) keeping lawn and garden areas alive, free of weeds, and attractive; (vii) keeping driveways, walkways and other structural improvements in good repair; complying with all governmental health and police requirements; (viii) maintaining grading and storm water drainage as originally established on the Unit; and (ix) repairing and painting (or other appropriate external care) of improvements located on a Unit, including periodic painting and pressure washing as needed.

(b) Failure to Maintain. In the event that the Board of Directors determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair or replacement of items for which such Owner is responsible hereunder, the Association shall, except in an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair or replacement to the Unit at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair or replacement, or, in the event that such maintenance, repair or replacement is not capable of completion within a ten-day period, to commence such work which shall be completed within a reasonable period of



time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair or replacement to the Unit and all costs thereof shall be assessed against the Owner and the Unit as a specific assessment. This provisions shall not apply to Units owned by Declarant unless improved with a dwelling and occupied as a residence.

**5.3 Conveyance of Common Property by Declarant to Association; No Implied Rights.**

Declarant, Approved Builder with the consent of Declarant, or the owner of the property with the consent of Declarant may transfer or convey to the Association at any time and from time to time any personal property and any interest in improved or unimproved real property. Such conveyance shall be deemed to be accepted by the Association upon delivery of any personal property or upon recordation of an instrument of conveyance of any interest in real property, and the property shall thereafter be Common Property to be used and, if and as provided in Section 5.1 hereof, maintained by the Association for the benefit of its members. So long as Declarant owns any property primarily for development and/or sale in the Development or Declarant has the unilateral right to annex additional property to the Declaration, Declarant may, upon written notice to the Association, require the conveyance by the Association to Declarant of any Common Property or any portion thereof, improved or unimproved, at no charge to Declarant, without a vote of the Owners/members of the Association, if the Common Property or portion thereof is: (i) found by Declarant to have been conveyed in error, (ii) needed by Declarant to make adjustments in property boundary lines, or (iii) reasonably determined by Declarant to be needed by Declarant due to changes in the overall scheme of development for the Development. The Association hereby constitutes and appoints Declarant as its agent and attorney-in-fact to accept/make on behalf of the Association any such conveyance and to execute on behalf of the Association any and all documents, including, without limitation, deeds, necessary or convenient to effectuate and document any such conveyance, and all acts of such attorney-in-fact are hereby ratified. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise. The Declarant, Approved Builder, with the consent of Declarant, or such owner of the property with the consent of Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section and shall have no duty or obligation to convey any property or property rights to the Association regardless of whether or not any such property has been made available for the use of Owners. The Declarant, Approved Builder with the approval of Declarant, or the owner of the property with the approval of Declarant, may reserve, by lease, license, easement or otherwise such rights of use and enjoyment in and to all or any portion of the property so conveyed as Declarant, Approved Builder or such other owner of such property may reasonably require so long as such reservation is not materially inconsistent with the overall scheme of development for the Development. Neither the recordation of any subdivision plat nor the use by the Owners or maintenance by the Association of any property shall create any rights, easements or licenses, in the Association or the Owners, express or implied, unless and until any such property rights, easements or licenses are conveyed by the Declarant, Approved Builder or the owner of such property to the Association or the Owners, as the case may be, by an instrument recorded in the Office of the Clerk of Superior Court of Cherokee County, Georgia.

**5.4 Partition.** The Common Property shall remain undivided and no Owner shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Development and without the

written consent of all holders of all Mortgages encumbering any portion of the property, including, but not limited to, the Units located within the Development.

5.5 Condemnation. In the event of a taking by eminent domain of any portion of the Common Property on which improvements have been constructed, the Association shall restore or replace such improvements so taken on the remaining Common Property, unless within sixty (60) days after such taking, an alternative plan is approved by at least seventy-five percent (75%) of the Total Association Vote and the consent of the Declarant. The provisions of this Declaration applicable to replacement or restoration of damaged improvements on the Common Property shall also apply to and govern the actions to be taken in the event that the improvements are not restored or replaced after a condemnation.

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

## Article 6

### Architectural Standards

6.1 General. No exterior construction, alteration or addition of any improvements of any nature whatsoever (including, without limitation, staking, clearing, excavating, grading, filling, construction of impervious surfaces, building, exterior alteration of existing improvements, installing storm and screen doors, storm windows and fencing changing the exterior color of any existing improvement and planting and removing landscaping materials), shall be commenced or placed upon any part of the Development unless, installed by the Declarant or an affiliate of the Declarant, approved in accordance with this Article, or otherwise expressly permitted under this Declaration. Any Owner may remodel, paint or redecorate the interior of a structure located on a Unit without approval hereunder. However, additions and/or modifications to the interior of porches, patios, decks, balconies and similar portions of a structure visible from outside of the Unit shall be subject to approval. No approval shall be required to rebuild in accordance with originally approved plans and specifications. Any Approved Builder shall submit its standard

plans for approval by Declarant hereunder and thereafter no further approval shall be required under this Article for such Approved Builder to construct improvements on Units consistent with the approved standard plans. This Article shall not apply to the activities of the Declarant or its 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 until: (a) the Declarant no longer owns any property in the Development and no longer has the right to unilaterally annex additional property to the Development; and (b) each Unit has been improved with a dwelling for which a certificate of occupancy has been issued.

**6.2 Guidelines and Procedures.** Except as provided above or as specifically articulated in the Architectural Guidelines as defined in Section 6.3 hereof, no exterior construction, addition or alteration shall be made unless and until plans and specifications shall have been submitted in writing to and approved by the Declarant. Such plans and specifications shall be of sufficient detail to allow the Declarant to make its review and to the extent required by the Declarant shall show the nature, kind, shape, height, materials and location of the proposed structure or improvement. The Declarant shall be the sole arbiter of such plans and specifications and may withhold approval for any reason, including, without limitation, purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. If the Declarant fails to approve or to disapprove submitted plans and specifications within thirty (30) days after the receipt of all required plans and specifications, such approval shall be deemed to have been given. If construction does not commence on a project for which plans have been approved within twelve (12) months of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the plans to the Declarant for reconsideration. The Declarant and its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property in the Development to determine whether or not these restrictive covenants have been or are being complied with and such Persons shall not be deemed guilty of trespass by reason of such entry; provided, however, nothing herein shall authorize entry into the interior space of an occupied residential dwelling located on a Unit without the consent of the Owner thereof.

**6.3 Architectural Guidelines.** The Declarant may adopt written architectural and landscaping guidelines ("Architectural Guidelines") and application and review procedures, which may provide for a review fee. The Declarant shall have sole and full authority to adopt, amend, repeal and expand, from time to time at its sole discretion and without notice, the Architectural Guidelines. In the event Declarant modifies, expands or repeals all or any portion of the Architectural Guidelines, said new Architectural Guidelines shall be distributed to all Owners and Occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled or modified by a majority of the Total Association Vote and the Declarant. The Declarant shall make the Architectural Guidelines available to Owners and Occupants who seek to engage in construction upon all or any portion of the Development and such Owners and Occupants shall conduct their operations strictly in accordance therewith and with the provisions of this Article 6. The Declarant shall also provide, without cost, a copy of the Architectural Guidelines then in effect to any requesting Owner or Mortgagee.

6.4 Limitation of Liability. Plans and specifications are not approved for engineering or structural design, quality of materials or for compliance with applicable building codes, permitting requirements, zoning conditions applicable to the Development or other local laws and ordinances governing construction in the Development and by approving such plans and specifications the Declarant, the Association and their respective directors, officers, members, representatives, agents or employees assume no liability or responsibility therefor, for any defect in any structure or improvement constructed from such plans and specifications or for any violation of building codes, permitting requirements, zoning conditions or for any violation of applicable laws and ordinances governing construction in the Development. Neither Declarant, the Association nor their respective officers, directors, members, employees and agents shall be liable in damages to anyone submitting plans and specifications to any of them for approval or to any Owner of property affected by these restrictions by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every Person who submits plans and specifications and every Owner agrees that such Person or Owner will not bring any action or suit against Declarant, the Association or their respective officers, directors, members, employees and agents to recover any damages and hereby releases, remises, quitclaims and covenants not to sue for all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given.

6.5 No Waiver. The approval of the Declarant 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 or consent of the Declarant, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications or drawings or matters whatsoever subsequently or additionally submitted for approval or consent.

6.6 Variances. Notwithstanding anything to the contrary contained herein, the Declarant shall be authorized to grant individual variances from any of the provisions of this Declaration and the Architectural Guidelines if it determines that waiver of application or enforcement of the provision in a particular case is dictated by unique circumstances, such as, but not limited to, topography, natural obstructions, hardship, aesthetic considerations or environmental considerations. No variance shall: (a) be effective unless in writing; (b) be inconsistent with the overall scheme of development for the Development; or (c) estop the Declarant from denying a variance in other similar circumstances. For purposes of this provision, the inability to obtain approval of any governmental agency or the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

6.7 Enforcement. Any structure, improvement or landscaping improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Declarant, Owners shall, at their own cost and expense, remove such nonconforming structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Declarant and its agents shall have the right to enter the property, remove the nonconforming structure or improvement, and restore the property to substantially the same condition as

previously existed. The Declarant, the Association and their respective officers, directors, members, employees and agents shall not be held liable to any Person for exercising the rights granted by this Section, including, without limitation, claims for damages resulting from the removal of the nonconforming structure or improvement in accordance with the procedures herein. All costs, including, without limitation, reasonable attorney's fees actually incurred, may be assessed against the Unit as a specific assessment. Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Architectural Guidelines may be excluded by the Declarant from the Development, subject to any applicable notice and hearing procedures contained in the Bylaws. In the event of noncompliance with this Article, the Declarant or the Association, as applicable, may record in the appropriate land records a notice of violation hereunder naming the violating Owner. Declarant or the Association, as applicable, shall also have the authority and standing to pursue any and all remedies available at law and equity to enforce the provisions of this Article, including, without limitation, the right to levy and collect fines as provided herein and in the Bylaws.

6.8 Architectural Review by Declarant. Until: (a) the Declarant no longer owns any property in the Development and no longer has the right to unilaterally annex additional property to the Development; and (b) each Unit has been improved with a dwelling or commercial structure for which a certificate of occupancy has been issued, the Declarant shall have the sole right, power and authority under this Article. Notwithstanding the foregoing, the Declarant may in its sole discretion form a modifications committee of not less than three (3) members ("Modifications Committee") and assign architectural control as to certain types of improvements or modifications to such Modifications Committee while retaining control over all other building and construction in the Development; provided, however, any right, power or authority of the Declarant which may be assigned to a Modifications Committee prior to the termination of the rights of Declarant hereunder shall only be by a written instrument executed by Declarant and recorded in the Cherokee County, Georgia land records and no such right, power or authority shall be assigned by implication or otherwise. For example and without limitation, the Declarant may assign control over certain modifications of existing structures to a Modifications Committee while retaining all authority to review and approve new construction and any modifications outside of the authority assigned. Upon the assignment in writing of all or a portion of such right and authority, the Modifications Committee shall then have such jurisdiction over architectural control under this Article as may have been assigned by the Declarant; provided, however, the Declarant may limit the authority of the Modifications Committee with respect to any control assigned to the Modifications Committee by setting forth such limitations in the written instrument assigning such control to the Modifications Committee and may terminate such assignment at any time and resume control over any architectural controls previously assigned. The establishment of an advisory architectural review committee or Modifications Committee shall not be deemed to be a relinquishment by Declarant of any of its right, power and authority hereunder.

After the termination of all rights of Declarant hereunder, the Board of Directors shall have all right, power and authority to review and approve all building and construction activity within the Development and this Article shall then be read and interpreted as if any reference to the authority of or action by the Declarant in this Article 6 were a reference to the authority of or

action by the Board of Directors. The Board of Directors may, but shall have no obligation to, establish an architectural review committee ("ARC"), which shall then have such rights, powers and authority as may be granted to it by the Board of Directors. The Board of Directors may grant to the ARC all of its rights, powers and authorities hereunder, or may grant the ARC such limited rights as it deems appropriate in its sole discretion. In the event that all or any portion of such rights, powers and authorities are granted to an ARC, this Article or portions thereof, as appropriate, shall then be read and interpreted as if any reference to the authority of or action by the Declarant in this Article 6 were a reference to the ARC. Notwithstanding anything herein to the contrary, the Board of Directors shall have the sole right and authority to appoint and remove the members of the ARC.

## Article 7

### Use Restrictions and Rules

7.1 General - Rules and Regulations. Each Unit in the Development shall be subject to the use restrictions and rules set forth in this Article. The Board of Directors may, from time to time, with the consent of Declarant and without a vote of the members, promulgate and modify reasonable rules and regulations applicable to the Development, the Common Property or any Neighborhood, as the case may be. Such rules and regulations shall be distributed to all applicable Owners prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants.

7.2 Residential Use. Each Residential Unit shall be used for single-family residential purposes exclusively. Leasing of a Residential Unit for single-family residential occupancy shall not be considered a business or business activity. No trade or business of any kind may be conducted in or from a Residential Unit, except that the Owner or Occupant residing at the Residential Unit may conduct business activities within the residential dwelling located thereon so long as the business activity: (a) does not otherwise violate the provisions of the Declaration, Bylaws or rules and regulations of the Association; (b) is not apparent or detectable by sight, sound or smell from the exterior of the Residential Unit; (c) does not unduly increase traffic flow or parking congestion; (d) conforms to all zoning requirements for the Development; (e) does not increase the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage; (f) is consistent with the residential character of the Development; (g) does not constitute a nuisance or a hazardous or offensive use; (h) does not threaten the security or safety of other residents of the Development; (i) does not involve door-to-door solicitation within the Development; and (j) does not involve regular visitation of the Residential Unit by employees who do not reside at the Residential Unit, clients, customers, suppliers or other business invitees, all as may be determined in each case in the sole discretion of the Board of Directors. The Board may issue rules regarding permitted business activities. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (x) the activity is engaged in full or part-time; (y) the activity is intended to or does generate a profit; or (z) a license is required for the activity. Notwithstanding the foregoing, nothing in this Section 7.2 shall be

construed as prohibiting the Declarant or any Approved Builder from maintaining model homes, speculative housing or sales and construction trailers within the Development.

7.3 Signs. No sign of any kind shall be erected or displayed within the Development without prior written approval under Article 6 hereof; provided, however, the following signs may be erected on any Unit without approval: (a) signs required by legal proceedings; (b) one (1) "life event" sign commemorating a birth, graduation, or similar life event for a period not to exceed seven (7) days from the date of the event; and (c) such other signs as may be permitted under the Architectural Guidelines. Except as provided in this Section, no real estate signs, including, without limitation, for-sale, for-rent or open house signs, shall be erected or maintained on any Unit in the Development. Declarant may, but shall have no obligation to, create Development-Wide Standard signs or guidelines for use by Owners and their realtors in advertising real estate for sale within the Development. Such Development-Wide Standard signs, if provided, shall be kept by Declarant on the Development and shall be available for use by Owners and their realtors upon request and shall be the sole signage used by Owners and realtors within the Development. The Declarant may charge a reasonable fee or deposit for the use of such signs and the use of such signs shall be subject to such rules and regulations as the Declarant may adopt from time to time. After the rights of Declarant under this Declaration have terminated, the Association shall have all rights and obligations relative to operation of the Development-Wide Standard sign program. In the event that no Development-Wide Standard sign program is operated by Declarant or the Association, all real estate signage must be approved under Article 6 hereof. Further, notwithstanding the foregoing, the Board, on behalf of the Association, Approved Builder, with the consent of Declarant, and the Declarant shall have the right to erect and display reasonable and appropriate signs, including, without limitation, street signs, directional signs and marketing and sales signs relating to the development, construction or sales of residential dwellings located on Units in the Development. The Board of Directors shall also have the right to adopt reasonable rules and regulations governing the display and placement of signs in the Development, including, without limitation, imposing reasonable time, place and manner restrictions. The Board may impose a fine determined by the Board in its sole discretion per day for the display of any sign which violates this provision and is not removed within twenty-four (24) hours after written demand is delivered to the Owner at that Unit.

7.4 Vehicles; Parking. Vehicles shall be parked only in appropriate parking spaces serving the Unit or other designated parking areas established by the Board, if any; specifically including driveways serving the Unit. No on street parking shall be permitted except in spaces designated for on street parking. All parking shall be subject to such reasonable rules and regulations as the Board may adopt. The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, golf carts, trucks, campers, buses, vans and automobiles. The term "commercial vehicles" as used herein, shall include, without limitation, any vehicle which bears any indicia of commercial use, including, but not limited to, writing, logos, ladders or vehicles which are not primarily used for the transportation of passengers. The term "parking areas" shall refer to the number of garage parking spaces, if any, on the Unit or such other appropriate parking areas on a Unit as may be designated by the Board of Directors from time to time. Garages shall be used for parking of vehicles and shall not be used primarily for storage or other purposes. Garage doors should be

kept closed at all times, except during times of ingress and egress from the garage. No vehicle may be left upon any portion of the Development, except in a garage or other area designated by the Board, if it is not licensed or if it is in a condition such that it is incapable of being operated upon the public highways. Such vehicle may be removed from the Development by the Board of Directors. Any towed vehicle, boat, personal water craft, recreational vehicle, motor home, trailer, motorcycle, minibike, scooter, go-cart, golf cart, commercial vehicle, camper, bus or mobile home regularly stored in the Development or temporarily kept in the Development, except if kept in a garage or other area designated by the Board, for periods longer than forty-eight (48) hours may be removed from the Development by the Board of Directors. Trucks with mounted campers which are used as a primary means of transportation shall not be considered recreational vehicles provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal. Commercial vehicles shall not be permitted on any Residential Unit, except if kept in an enclosed garage; provided however, construction, service, and delivery vehicles shall be exempt from this provision for such period of time as is reasonably necessary to provide service or to make a delivery to a Residential Unit. The prohibition of commercial vehicles shall not apply to Declarant or Approved Builder, with the consent of Declarant. As long as rights of existing Owners are not adversely affected, the Declarant may unilaterally amend this Declaration to modify the provisions of this Section.

If any vehicle is parked on any portion of the Common Property, including the private streets in the Development, in violation of this Section or in violation of the Association's rules and regulations, the Board or agent of the Association may place a notice on the vehicle specifying the nature of the violation and stating that after twenty-four (24) hours the vehicle may be towed. The notice shall include the name and telephone number of the person or entity that will tow the vehicle and the name and telephone number of a person to contact regarding the violation. If twenty-four (24) hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six (6) months of such notice, the Board or agent of the Association may have the vehicle towed in accordance with the notice, without further notice to the Owner or user of the vehicle. If a vehicle is parked in a fire lane, is blocking another vehicle, is obstructing the flow of traffic, is parked on any landscaped area or otherwise creates a hazardous condition, no notice shall be required and the Board or agent of the Association may have the vehicle towed immediately. If a vehicle is towed in accordance with this subparagraph, neither the Association nor any officer or agent of the Association shall be liable to any person for any claim of damage as a result of the towing activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow. Notwithstanding the foregoing, the Declarant and Approved Builder, with the consent of Declarant, and their respective agents, subcontractors and assigns shall have the right, during regular business hours, to park vehicles on any and all streets, Units or Common Property within the Development as needed in order to facilitate the construction, development and build out of the Development.

#### 7.5 Animals Including Pets.

(a) General. No animals of any kind may be raised, bred, kept or permitted on any Unit, with the exception of dogs, cats or other usual and common household pets or animals in a reasonable number as determined by the Board from time to time. No animals shall be kept,



bred or maintained for any commercial purpose. No dog runs, runners or exterior pens for household animals shall be erected or maintained on any Unit unless approved in accordance with the provisions of Article 6 hereof. Dogs shall at all times when outside be kept on a leash or otherwise under the physical control of a responsible person; provided, however, dogs shall not be required to be kept on a leash while in the Development dog park. All Owners must control their animals at all times, whether or not such Owner is present, in a manner that will prevent any animal from: (i) making noise at objectionable sound levels for extended periods of time, whether continuously or intermittently; (ii) endangering the health or safety of other Owners, their families, guests or invitees or creating fear in other Owners as to the safety of themselves, their families, guests or invitees; or (iii) otherwise constituting a nuisance or inconvenience to the Owner(s) or Occupant(s) of any other Unit; all of the foregoing as determined by the Association in its sole discretion.

All animals shall be registered, licensed and inoculated if and as required by law. Animal control authorities shall be permitted to enter the Development to patrol and remove unlicensed animals. Animal waste deposited in the Development must be removed by the owner of the animal or the person responsible for the animal. The Association may adopt reasonable rules and regulations designed to minimize damage and disturbance to other Owners and Occupants, including without limitation, regulations requiring damage deposits, waste removal, leash controls and noise controls. The Association may require that an Owner remove any animal that presents an actual threat to the health or safety of residents and require abatement of any nuisance or unreasonable source of annoyance. In the event that the Owner fails to remove an animal as provided herein, the Association shall have the right to institute legal action to have the animal removed and all costs associated therewith shall be a specific assessment against the Unit of such Owner.

(b) Dog Park. The Development may contain a fenced dog park. Owners shall not permit animals other than dogs in the dog park. The gates providing access to and from the dog park shall be closed and latched after entering or exiting the dog park. Owners shall closely supervise their dogs and have a leash available at all times. Dogs that attack or otherwise present a danger or interfere with the freedom of movement of Persons and/or other dogs shall constitute a nuisance and shall be removed from the dog park immediately. The Association shall have the right to prohibit from the dog park any dog it determines, in its sole discretion, constitutes a nuisance to other Persons and/or dogs. Female dogs in season shall not be permitted in the dog park. Owners are responsible for promptly removing the waste deposited by their dog in the dog park. Use of the dog park shall be subject to applicable city and/or county code provisions and such reasonable rules and regulations as may be adopted or promulgated by the Board from time to time, which may include, but shall not be limited to, rules and regulations regulating: (i) the number of dogs permitted in the dog park at one time; (ii) the hours in which the dog park may be used and/or accessed; and (iii) the activities permitted in the dog park.

7.6 Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly or unkempt condition on a Unit. No Unit shall be used for the storage of anything that will cause such Unit to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that

will or might disturb the peace, quiet, safety, comfort or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the Development, nor shall anything be done tending to cause embarrassment, discomfort, annoyance or nuisance to any Person using any property within the Development. No plants, animals, device or thing of any sort shall be maintained in the Development whose activities or existence is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the Development by other Owners and Occupants. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, sirens, bells, amplifiers or other sound devices, except such devices as may be used exclusively for security purposes, screaming, shouting, excessively loud talking, fighting, raucous behavior, insobriety, playing loud music or television, use of any alarm, equipment or device, mechanical or otherwise which creates or produces excessively loud sounds, vibrations or any other conduct which creates any noxious or offensive odors outside a home shall be permitted, located, used, placed, installed or maintained on any Unit, or any portion thereof. The inconvenience complained of shall not be fanciful, or such as would affect only one of fastidious taste, but it shall be such as would affect an ordinary, reasonable person as determined in a particular instance by the Board. Notwithstanding anything to the contrary herein, each Owner and Occupant acknowledges that the Declarant and Approved Builder and their respective agents, subcontractors or employees may engage in construction activities on one or more Units in the Development and further agrees that such construction activities shall not be deemed a nuisance as provided herein.

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

7.8 Antennas. No exterior antenna, receiving dish or similar apparatus of any kind for receiving or transmitting radio or video signals shall be placed, allowed or maintained upon any portion of the Development, including any Unit, unless approved in accordance with the provisions of Article 6 hereof; provided, however, no such approval shall be necessary to install (a) antennas designed to receive direct broadcast satellite services, including direct-to-home satellite services or to receive or transmit fixed wireless signals via satellite, that are one meter or less in diameter; (b) antennas designed to receive video programming services via multi-point distribution services or to receive or transmit fixed wireless signals other than via satellite that are one meter or less in diameter or diagonal measurement; or (c) antennas that are designed and intended to receive television broadcast signals. Owners shall install any permitted antennae on the rear of the dwelling unless such installation (i) imposes unreasonable delay or prevents the use of the antennae; (ii) unreasonably increases the cost of installation; or (iii) an acceptable quality signal cannot otherwise be obtained.

7.9 Tree Removal. No trees that are more than four inches in diameter at a point 12 inches above the ground and no ornamental or flowering trees, including, but not limited to, dogwood trees, cottonwood trees, cherry trees or apple trees, regardless of diameter, shall be removed without the prior written consent of the ARC. Owners shall also comply with any local ordinance applicable to tree removal. In the event of a conflict between the provisions of this

Section and any local ordinance, the more restrictive provision shall govern. This provision shall not apply to the removal of trees by the Declarant or Approved Builder, with the consent of Declarant.

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

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

7.12 Garbage Cans, Woodpiles, Etc. Unless otherwise approved under Article 6 hereof, all garbage cans, recycling bins, woodpiles, air conditioning units, heat pumps, swimming pool pumps, filters and related equipment, and other similar items shall be placed in the garage serving the Unit or located or screened in a manner approved by the Board of Directors so as to be concealed from view from neighboring streets and property. All rubbish, trash, recycling and garbage shall be regularly removed and shall not be allowed to accumulate. Trash, garbage, debris or other waste matter of any kind may not be burned in the Development, except by Declarant or Approved Builder, with the consent of Declarant, during the original construction of a dwelling located on a Unit.

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

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

7.15 Fences. No fence or fencing type barrier of any kind shall be placed, erected, allowed or maintained upon any part of the Common Property except as may be installed by the Association or upon any Unit without prior written approval under Article 6. Guidelines detailing acceptable fence styles or specifications may be issued pursuant to Article 6, but in no event may a chain link or barbed wire fence be approved; provided, however, the Declarant, Approved Builder, with the consent of Declarant, and the Association may erect any type of fence on the Common Property or elsewhere within the Development as they may deem appropriate or as necessary to satisfy the requirements of any law, regulation or governmental entity or for the health and safety of Owners and Occupants.

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

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

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

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

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

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

7.22 Play Equipment, Water Features and Similar Items. No hammock, statuary, play equipment (including, without limitation, basketball goals), exterior sculpture, fountains or water features may be erected on any Unit, without prior written approval in accordance with the provisions of Article 6 hereof and/or compliance with written guidelines established under Article 6 hereof, as applicable. Recreational equipment, including, without limitation, basketball goals, shall be placed in the garage or stored out of view from neighboring streets and property when not in use.

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

7.24 Window Treatments. No foil or other reflective materials shall be used on any windows for sunscreens, blinds, shades, or any other purpose. All window treatments which can be seen at any time from the outside of any structure located on a Unit must be stained wooden blinds, bamboo shutters, or white or off-white in color unless otherwise approved under Article 6 hereof.

7.25 Detention Ponds. Except as herein provided, all storm water retention or detention ponds, streams and lakes in the Development 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, the Declarant and/or Approved Builder 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 detention or retention ponds, lake or stream in the Development. 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, lake or stream within the Development, or any other Common Property. Applicable governmental agencies, the Declarant and the Association shall have the sole right to control the water level of all other bodies of water located within the Development 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, lake or stream within the Development.

7.26 Use of Multi-Use Trail. The Development contains a multi-use trail, as more particularly shown the subdivision plat(s) for the Development (the "Trail"). Members of the general public may enter portions of the Common Property to use and enjoy said Trail. Use of the Trail may be subject to rules and regulations established by the City of Woodstock. The Association, the Declarant and their respective officers, directors, members, employees, representatives or agents shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of the Trail by anyone.

7.27 Traffic Regulations. All vehicular traffic on any private streets in the Development 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. The Association shall be entitled to enforce the same by establishing such enforcement procedures as it deems appropriate, including levying and collecting fines for the violations thereof. In the event of a conflict between the provisions of state and local laws and the 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 Development. All vehicles of any kind and nature which are operated on the streets or alleys in the Development shall be operated in a careful, prudent, safe, and quiet manner and with due consideration for the rights of all Owners and Occupants.

7.28 Hazardous Materials. No hazardous materials may be used, generated, stored, disposed of, discharged or released on, above, or under the Development, except in compliance with all applicable laws, regulations, ordinances and permits. "Hazardous Materials" means any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, petroleum, oil, or any petroleum by-product as defined as a hazardous substance under any applicable federal, state, or local laws, regulations or ordinances whether existing as of the date of this Declaration, previously enforced or subsequently enacted. Each Owner assumes sole responsibility and liability for the compliance with applicable federal, state and local laws and regulations and hereby agrees to indemnify and hold the Declarant, Approved Builder and the

Association harmless from any loss or damage arising out of any release of a Hazardous Material on or from the Owner's Unit. No underground storage tanks shall be installed or maintained within the Development. Each Owner shall:

- (i) disclose to the Board of Directors all Hazardous Materials proposed to be stored, used or generated in the Development;
- (ii) permit inspection by the Board of Directors or its agents of those portions of a Unit where hazardous materials are stored, used or generated; and
- (iii) comply with all regulations and rules adopted by the Board of Directors regarding maintenance, operation and monitoring of Hazardous Materials, including spill and Hazardous Materials containment systems and actions and procedures to be followed in case of accidental spills.

7.29 Community Bulletin Board. As part of the Common Property maintained by the Association, Declarant, Approved Builder and/or the Board shall have the right, but not the obligation, to erect on the community a bulletin board primarily for the use of Owners in advertising their Units for sale or lease. For so long as the Association desires to maintain this bulletin board, each Owner and the Owner's real estate broker and agent may use the bulletin board; provided, however, the use of the bulletin board shall be subject to such reasonable nondiscriminatory rules and regulations as may be adopted or promulgated by the Board regulating the size and duration of such advertisements. Declarant, Approved Builder, or Board may terminate use of the bulletin board entirely at any time.

7.30 Residential Leasing. Residential Units and Mixed Use Units may be leased for residential purposes. Notwithstanding anything herein to the contrary, no for-lease or for-rent signs shall be erected or maintained on any Unit in the Development unless erected or approved by the Declarant or the Board of Directors in accordance with Article 6 hereof. All leases shall be in writing. Residential Units and Mixed Use Units may be leased only in their entirety; no fraction or portion, including, without limitation, any guest suites or living space located above the garages serving such Residential Units or Mixed Use Units, may be leased without prior written approval from the Board of Directors. Unless otherwise provided by the Board of Directors, all leases shall have a minimum term of at least one (1) year. The Owner must provide the lessee with copies of the Declaration, Bylaws, the rules and regulations of the Association and the lease shall provide that the Owner has made available to the lessee copies of the Declaration, Bylaws, and the rules and regulations.

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

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

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

(c) 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 and enjoy the Common Property.

(d) Liability for Assessments; Assignment of Rent. If an Owner who is leasing a Residential Unit or Mixed Use Unit fails to pay any general, special or specific assessment or any other charge owed to the Association for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board of Directors, lessee shall pay to the Association all unpaid general, special and specific assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by lessee. However, lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Board of Director's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If lessee fails to comply with the Board of Director's request to pay assessments or other charges, lessee shall pay to the Association all amounts authorized under the Declaration as if lessee were an Owner. The above provision shall not be construed to release the Owner from any assessment obligation.

(e) Exemption. This Section shall not apply to any leasing transaction entered into by the holder of a first Mortgage on a Residential Unit or Mixed Use Unit who becomes the Owner of the Unit through foreclosure, or to any leasing transaction entered into by Declarant or its affiliates or an Approved Builder.

### 7.31 Vegetable Gardens.

(a) General. Notwithstanding any provision to the contrary contained herein, Owners shall be permitted to have a vegetable garden in the rear of the Owner's Unit or on Limited Common Property located to the rear of an Owner's Unit with prior approval in accordance with the provisions of Article 6 hereof. Vegetable gardens shall be subject to such reasonable rules and regulations adopted by the Board of Directors from time to time, which may include, but shall not be limited to, rules and regulations regulating: (i) the size and location of vegetable gardens; and (ii) the maintenance of the vegetable gardens. The Board may also establish community garden(s) in the Common Property and develop separate guidelines relating to the use and maintenance of such areas.

(b) Prohibition of Compost Piles and Manure. In order to prevent unpleasant odors in the Development, no compost piles, composted manure, composting materials, animal manure or decaying vegetation matter shall be kept or used on any Unit or Limited Common Property appurtenant to any Unit without prior written approval in accordance with Article 6 hereof or in accordance with any rules and regulations adopted by the Board of Directors from time to time.

### 7.32 Commercial Units; Restricted and Prohibited Uses.

(a) General Prohibited Uses. No Commercial Unit nor any portion thereof shall be used (i) for any activity which physically and materially impedes the conduct of the business or occupancy of any other Owner, (ii) in violation of any legal requirement with respect to the use of or any activities conducted on such Commercial Unit or any portion thereof, or (iii) for any other use not compatible with the operation of the Development in compliance with the Development-Wide Standard. For purposes of this Section 7.32, the commercial portion of a Mixed Use Unit shall be included in the definition of a "Commercial Unit."

(b) Without limiting the generality of the provisions of Section 7.32(a), the following uses shall not be permitted within any Commercial Unit:

(i) Any use which constitutes a public or private nuisance or which emits or generates an obnoxious odor, noise, litter, dust or dirt which can be heard or smelled outside of any Commercial Unit; provided, however, that ordinary cooking odor associated with Commercial Units operated as restaurants in accordance with the Development-Wide Standard shall in no event violate this provision;

(ii) Any use which produces or is accompanied by any unusual fire, explosive or other damaging or dangerous hazards (including the storage, display or sale of explosives or fireworks, other than de minimis amounts of fireworks for sale to consumers to the extent permitted by law); provided, however, that the operation of kitchens and appliances in the preparation of foods and beverages for restaurants and other food service retail establishments within the Commercial Unit shall not be constitute a violation of this subsection so long as all equipment is in good working order and properly maintained in a good and safe condition.



- (iii) Any shooting gallery or gun range;
- (iv) Any operation primarily used as a storage warehouse operation and any assembling, manufacturing, refining, smelting, industrial, agricultural, drilling or mining operation;
- (v) Any automobile body shop or repair operation, including automobile servicing or repair work (e.g., oil change, tire change, body or paint shop, tune-up, brake or muffler service);
- (vi) Gasoline or automobile service stations;
- (vii) Any residential use, including, but not limited to, single family dwellings, townhouses, condominiums, other multi-family units and other forms of living quarters, sleeping apartments or lodging rooms; provided, however, this restriction shall not apply to any residential portion of a Mixed Use Unit or to any Commercial Unit owned by Declarant or its affiliates or Approved Builder;
- (viii) Any hotel, extended stay or other lodging facilities;
- (ix) Any veterinarian, veterinary hospital or animal raising facilities (except that this prohibition shall not prohibit pet shops, so long as any such pet shop shall not provide boarding services to the public for animals of any kind and);
- (x) Any mortuary, funeral home or parlor;
- (xi) Any facility or establishment primarily selling or exhibiting sexually explicit, or pornographic materials or illegal drug-related paraphernalia or featuring strip tease acts or nude dancing;
- (xii) Any nightclub, discotheque, dance hall, or bar; provided, however for purposes of this Declaration, “bar” shall be defined as an establishment offering the sale of alcoholic beverages for consumption on the premises where such sales are not incidental to the sale of food for on premises consumption in a bona fide food restaurant. Incidental sales of alcoholic beverages for on premises consumption incidental to a business operated primarily as a restaurant (including, without limitation, so called brew pubs) shall be an authorized use so long as the sale of food constitutes not less than thirty percent (30%) of gross monthly sales at such establishment).;
- (xiii) Any laundry or dry-cleaning facilities (other than a “drop-off” or “pick-up” station with no onsite dry-cleaning or laundry);
- (xiv) Any movie theater or bowling alley;
- (xv) Any flea market, pawn shop, swap shop or “outlet store” selling merchandise that is damaged or discontinued;

(xvi) Any off-price or so-called “dollar store”;

(xvii) Any arcade, game room or billiard room; provided, however, that with the prior written approval of the Association, a limited number of pool tables or video games which are incidental to the operation of a Commercial Unit primarily as a restaurant shall be authorized;

(xviii) Any laboratory that performs chemical experiments or other intrusive physical tests;

(xix) Any dance studio;

(xx) Any tattoo parlor or body piercing shop; or

(xxi) Any massage parlor.

## Article 8 Townhome Units

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

### 8.2 Maintenance.

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

Upon resolution of the Board and approval by Owners representing at least a Majority of the Townhome Units and the consent of Declarant, the Association may assume responsibility for providing additional exterior maintenance of such Townhome Unit and the structures thereon, with the expenses thereof to be paid as a Townhome Unit assessment as provided herein.

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

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

8.3 Landscaping Maintenance. As provided in Section 5.1, the Association shall maintain and keep in good repair the landscaping improvements located on the exterior portions of the Townhome Units and in Limited Common Property, other than the landscaping improvements, if any, which are the responsibility of Townhome Unit Owners as provided in Section 8.2(b) above and to the extent the same are not maintained by a Neighborhood Association pursuant to a Neighborhood Declaration. The Board of Directors, in its sole discretion, may leave portions of the lawns surrounding the Townhome Units as undisturbed natural areas and may change the level of landscaping maintenance performed in areas surrounding the Townhome Units. The Board of Directors may promulgate rules setting forth the extent of landscaping maintenance to be performed by the Association and the rights of Owners with respect to adding or modifying landscaping improvements, including, for example allowing seasonal flowering plants on the Townhome Units at the expense of the Owner. Landscaping improvements installed by the Owner in accordance with the provisions of this Declaration shall be maintained by the Owner in a manner consistent with the Development-Wide Standard. Any landscaping improvements originally installed by the Owner of a Townhome Unit which are not properly maintained, including, but not limited to, damaged, diseased or dead plants, shrubs and trees may, at the sole discretion of the Board of Directors, be

removed. The costs associated with removing any damaged, diseased or dead plants, shrubs and trees originally installed by an Owner of a Townhome Unit on such Unit, may be assessed against the Owner and the Townhome Unit as a Neighborhood assessment. Any common irrigation system installed by the Declarant or the Association shall be Common Property, operated, maintained, repaired and replaced by the Association. The deed of conveyance of any Townhome Unit shall not include any right, title or interest in such irrigation system, if any.

8.4 Use Restrictions and Rules. The use restrictions set forth in this Section 8.4 shall be in addition to the use restrictions set forth in Article 7 of this Declaration.

(a) Heating of Units in Colder Months. In order to prevent breakage of water pipes during colder months of the year resulting in damage to Townhome Units, increased common expenses, and increased insurance premiums or cancellation of insurance policies due to numerous damage claims, the thermostats within all Townhome Units shall be maintained with heating operating and at a minimum of fifty (50°) degrees Fahrenheit during the months of October, November, December, January, February, March, and April. Owners shall take all steps possible on a timely basis to keep heating equipment, including, but not limited to, the thermostat, in good working order and repair. At any time during the months specified above when the heating equipment is not working, the Owner shall immediately inform the Owners of the other Townhome Units of this failure of the equipment and of the time needed in order to repair the equipment and shall take reasonable steps to keep the Townhome Unit heated sufficiently to prevent the breakage of water pipes.

(b) Measures Related to Insurance Coverage.

The Board of Directors shall have the authority to require all or any Townhome Unit Owner(s) to do any act or perform any work involving portions of the Development that are the maintenance responsibility of the Townhome Unit Owner which will, in the Board's sole discretion, decrease the possibility of fire or other damage to any improvements located in the Development, reduce the insurance premium paid by the Association for any insurance coverage, or otherwise assist the Board in procuring or maintaining such insurance coverage. This authority shall include, but need not be limited to, requiring all Owners to: (i) turn off cut-off valves, which may now or hereafter be installed, during winter months for outside water spigots; (ii) insulate pipes sufficiently or take other preventive measures to prevent water pipes from freezing; (iii) install smoke detectors; (iv) make improvements to the Owner's Townhome Unit; and (v) take such other measures as the Board may reasonably require; provided, however, any work requested by the Association shall not exceed the amount of the annual general assessment.

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

(b) above, including, but not limited to, a right of entry during reasonable hours and after reasonable notice to the Owner or Occupant of the Townhome Unit, except that access may be had at any time without notice in an emergency situation.

8.5 Budget. It shall be the duty of the Board to prepare a budget covering the estimated expenses to be incurred during the coming year for the Townhome Units in the Development, to the extent that a separate Neighborhood Association is not established to govern said Townhome Units. Neighborhood assessments for the Townhome Units shall be allocated equally among Townhome Units. The Board shall cause a copy of such budget and notice of the amount of the assessment for the Townhome Units for the coming year to be delivered to each Owner of a Townhome Unit at least thirty (30) days prior to the due date of any assessment. The budget and assessment shall become effective unless disapproved by a majority of the Owners of Townhome Units in the Development and Declarant. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for any period, then and until such time as a budget shall have been determined, as provided herein, the budget in effect shall continue. Neighborhood Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors, which may include, without limitation, acceleration, upon ten (10) days' written notice for delinquents. Unless otherwise provided by the Board, the Neighborhood assessment applicable to the Townhome Units shall be paid in one annual installment.

#### 8.6 Easements.

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

(b) Townhome Unit Owner - Easement for Utilities. Declarant hereby establishes for the benefit of each Townhome Unit a nonexclusive easement for access to and installation, maintenance, repair, replacement and use of all pipes, wires, cables, conduits, utility lines, air conditioning compressor, flues and ducts serving such Townhome Unit and situated in, on or under any other Townhome Unit or the Common Property, including Limited Common Property. In the event that any Owner desires access to another Townhome Unit to install, maintain, repair or replace any utility pipe, wire, cable, conduit, utility line, air conditioning compressor, flue or duct, the Owner shall contact the Owner of such other Townhome Unit(s) at least two (2) days in advance of the date that access is needed and attempt to agree on a convenient date and time for access by the Owner and the Owner's contractors. Access in emergency situations shall be granted immediately upon request. Any Owner of a Townhome Unit to which access is needed

under this Section shall not unreasonably withhold, condition or delay such access. Rights exercised pursuant to this easement shall be exercised with a minimum of interference to the quiet enjoyment of affected Townhome Units, reasonable steps shall be taken to protect such Townhome Units and the property of the Owners and Occupants thereof, and damage shall be repaired by the Person causing the damage at its sole expense.

(c) Easement for Townhome Unit Maintenance. Declarant hereby reserves for the benefit of each Townhome Unit reciprocal appurtenant easements between adjacent Townhome Units and an easement over adjacent Common Property, including Limited Common Property, for the purpose of maintaining or repairing the improvements located on each Townhome Unit which easement shall extend to a distance of ten (10) feet as measured from any point on the common boundary between the Townhome Units. The easement shall be used only for such period of time as is reasonably necessary in order to complete the maintenance or repair. The Owner exercising this easement right shall be liable for the prompt repair of any damage to the Townhome Unit or Common Property over which this easement is exercised which arises out of such maintenance or repair work.

8.7 Amendment. As long as the substantive rights of existing Owners of Townhome Units are not materially adversely affected, the Declarant may unilaterally amend this Declaration to modify the provisions of this Article or impose additional covenants and restrictions for the Townhome Units. Except for unilateral amendments by Declarant as provided herein, this Article may be amended only by the Board of Directors upon the affirmative vote, written consent or any combination thereof of Owners of two-thirds (2/3) of the Townhome Units and the consent of the Declarant.

## Article 9 Insurance and Casualty Losses

9.1 Insurance on Common Property. The Association shall obtain insurance coverage necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the U.S. Department of Veterans Affairs, and the U.S. Department of Housing and Urban Development, as applicable to the Development. The Board of Directors shall obtain casualty insurance for all insurable improvements located on the Common Property which the Association is obligated to maintain, including, without limitation, the recreational facilities serving the Development. This insurance shall provide, at a minimum, fire and extended coverage and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The Board of Directors shall obtain a public liability policy covering the Association for all damage or injury caused by the negligence of the Association or any of its agents, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least One Million (\$1,000,000.00) Dollars. Policies may contain a reasonable deductible as determined by the Board of Directors. In addition to the other insurance required by this Section, the Board of Directors shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on directors, officers, employees and other persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall at

least equal three (3) months' total assessments plus reserves on hand. All such insurance coverage shall be written in the name of the Association.

9.2 Individual Insurance. By virtue of taking title to a Unit subject to the terms of this Declaration, each Owner acknowledges that the Association has no obligation to provide any insurance for any portion of individual Units, except that, the Association shall obtain insurance on Townhome Units as provided in Section 9.5 hereof. Each Owner of a Unit other than a Townhome Unit shall carry all-risk casualty insurance on all structures and a liability policy covering damage or injury occurring on the Owner's property; provided, however, in the event any Neighborhood Declaration provides that a Neighborhood Association shall acquire and maintain insurance on an individual Unit to the extent not already maintained herein, a Unit Owner shall be relieved of this responsibility. The casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an all-risk policy, if reasonably available and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The policies required hereunder shall be in effect at all times and a copy of such policies shall be furnished to the Association upon request. In the event that any Owner or Neighborhood Association fails to obtain insurance as required by this Declaration or pursuant to any Neighborhood Declaration, the Association may purchase such insurance on behalf of the Owner or Neighborhood Association, as the case may be, and assess the cost thereof to the Owner(s) as a specific assessment or Neighborhood Assessment, as applicable.

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

reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association. In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, the property shall thereafter be maintained by the Association in a neat and attractive condition consistent with the Development-Wide Standard.

9.4 Damage and Destruction -- Insured by Owners. Improvements on a Unit damaged by fire or other casualty shall be repaired or reconstructed in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 6 of this Declaration. The repair or reconstruction shall be completed within seventy-five (75) days after the damage occurred or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period and shall be completed within a reasonable period of time thereafter. Alternatively, the Owner of a Unit, may elect to demolish all improvements on the Unit and remove all debris and ruins therefrom within seventy-five (75) days after such damage occurred and thereafter maintain the Unit in a neat and attractive, landscaped condition consistent with the Development-Wide Standard and this Declaration. The Owner shall pay all costs which are not covered by insurance proceeds.

9.5 Insurance on Townhome Units. Unless otherwise determined by resolution of the Board and at least thirty (30) days' prior written notice to each Owner of a Townhome Unit, the Association shall obtain blanket casualty insurance for all Townhome Units; provided however, the Association's insurance shall not be required to include the Townhome Unit Owner's personal property (which shall be the sole responsibility of the Townhome Unit Owner). The Association's insurance policy shall cover loss or damage by fire or other hazards to Townhome Units, including extended coverage, vandalism and malicious mischief and shall be in the amount sufficient to cover the full replacement cost of any repair or reconstruction of the Townhome Units in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all risk" coverage for the Townhome Units in like amounts. The costs of insuring the Townhome Units shall be assessed as a Neighborhood Assessment on all Townhome Units. The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the Persons who would be responsible for such loss in the absence of insurance. If the loss affects more than one Townhome Unit or a Townhome Unit and the Common Property, the cost of the deductible may be apportioned and assessed equitably by the Board among the parties suffering loss in accordance with the total costs of repair, unless the insurance policy provided that the deductible will apply to each Townhome Unit separately. If any Townhome Unit Owner fails to pay the deductible when required hereunder, the Association shall assess the cost to any such Owner as a specific assessment.

## Article 10 Easements

10.1 General. Each Unit shall be subject to those easements, if any, shown or set forth on the recorded subdivision plat(s) for the Development, as amended from time to time as well as the easements now or hereafter established by the Declarant in this Declaration or by any



other document recorded in the Office of the Clerk of Superior Court for Cherokee County, Georgia.

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

(a) the right of the Association to charge reasonable admission and other fees for a Residential Unit Owner or Mixed Use Owner to use and enjoy the recreational facilities serving the Development, to limit the number of Persons who may use said recreational facilities, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by authorized users and their guests and invitees; provided, however, only the Owners of Residential Unit and Mixed Use Units and their Occupants, guests and invitees shall have the right to use and enjoy the recreational facilities serving the Development;

(b) the right of the Association to suspend the right of an Owner of a Residential Unit or Mixed Use Unit to use the recreational facilities serving the Development or any Owner to use and enjoy the Common Property for any period during which any past due assessment against the Owner's Unit remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, Bylaws or rules and regulations;

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

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

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

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

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

(h) all rights of Owners of Units to use and enjoy the Limited Common Property appurtenant to such Units, if any, as provided herein; and

(i) the rights of nonmembers to use and enjoy the recreational facilities as provided in Article 11 hereof.

10.3 Easements for Utilities. There is hereby reserved to the Declarant and granted to the Association and Approved Builder a blanket easement upon, across, above and under all property within the Development for access, ingress, egress, installation, alteration, repairing, replacing, and maintaining all utilities serving the Development or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system, or security system which the Declarant, Approved Builder, with the consent of Declarant, or the Association might decide to have installed to serve the Development. Declarant, Approved Builder, with the consent of Declarant, and the Association or their respective designee, as the case may be, may alter drainage and water flow, install, repair, replace and maintain or authorize the installation, repairing, replacing and maintaining of such wires, conduits, cables and other equipment related to the providing of any utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Declarant or the Board shall have the right to grant such easement.

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

10.5 Easement for Maintenance. Declarant hereby grants to the Association a perpetual easement across the exterior portions of all Units as may be reasonably necessary for the maintenance required hereunder. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment of Units, reasonable steps shall be taken to protect such

property and damage shall be repaired by the Association or its contractor(s) at their sole expense.

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

10.7 Easement for Drainage. There is hereby reserved by the Declarant and granted to the Association and Approved Builder an easement upon, across, above and under all storm water drainage easement areas as shown on the recorded subdivision plat(s) for the Development for access, ingress, egress, installation, alteration, repairing, replacing, and maintaining the storm water drainage system and related facilities serving the Development or any portion thereof. This easement shall include the right to construct and maintain catch basins, retention ponds, detention ponds, drainage swales, storm sewers, storm drains, sloping banks, cut or fill. In addition, there is hereby reserved to the Declarant and granted to the Association and Approved Builder a blanket easement across all Units for creating and maintaining satisfactory drainage in the Development; provided, however, such easement area shall not include any portion of a Unit within the outer perimeter of the dwelling structure. It is anticipated that increased storm water run-off across downstream Units will result from the construction of impervious surface within the Development. Neither the Declarant, Approved Builder, the Association nor any builder or Owner constructing according to plans and specifications approved under Article 6 hereof shall have any liability to any Owner due to the increased flow or increased velocity of surface water resulting from approved construction within the Development.

10.8 Easement During Construction and Sale Period. Notwithstanding any provisions now or hereafter contained in this Declaration, the Bylaws, Articles of Incorporation, use restrictions, rules and regulations, architectural guidelines, and amendments thereto, Declarant reserves and grants to Approved Builder an easement across the Development to maintain and carry on, upon such portion of the Development as Declarant or Approved Builder, with the consent of Declarant, may reasonably deem necessary, such facilities and activities as in the sole opinion of Declarant may be required or convenient for Declarant's or Approved Builder's, as the case may be, development, construction and sales activities related to property hereby and hereafter subjected to this Declaration or for the development, construction or benefit of any neighboring property including, but not limited to: (a) the right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in the Development, including, without limitation, any Unit; (b) the right to tie into any portion of the Development with streets, driveways, paths, 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, cable television, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Development; (d) the right to grant

easements over, under, in or on the Development, including without limitation the Units, for the benefit of neighboring properties for the purpose of tying into and/or otherwise connecting and using sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Development; (e) the right to convert Units (with the consent of the Owner thereof) to Common Property and/or streets; (f) the right to construct recreational facilities, an amphitheater, utilities and other improvements on Common Property; (g) the right to carry on sales and promotional activities in the Development; (h) the right of Declarant, without the consent of any other Person, and the right of Approved Builder, with the consent of Declarant but without the consent of any other Person, to revise and re-record the subdivision plat(s) of the Development, including, without limitation, creating and/or more specifically describing any Unit or Limited Common Property, changing any Unit or portion of a Unit to Common Property, changing any Common Property to a Unit or Limited Common Property, or creating a public or private street over all or any portion of a Unit or other property within the Development; provided, however, the boundary lines of any Unit not owned by Declarant or Approved Builder shall not be changed without the written consent of the Owner(s) and Mortgagee(s) of such Unit; (i) the right to place or authorize the placement of marketing and directional signs on Units or right-of-way(s) at street intersections within the Development; and (j) the right to construct and operate business offices, signs, construction trailers, model residences and sales offices. The easement rights reserved and granted herein may be exercised by Declarant, Approved Builder, with the consent of Declarant, and their respective successors and assigns, authorized agents, employees, contractors and sub-contractors. Declarant and Approved Builder, with the consent of Declarant, may use residences, offices or other buildings owned or leased by Declarant or Approved Builder, as applicable, as model residences and sales offices without charge. This Section shall not be amended without the written consent of Declarant and Approved Builder until the rights of Declarant and Approved Builder have terminated as herein provided.

10.9 Easement for Walking Trails. There is hereby reserved to the Declarant and granted to the Association an easement for ingress, egress, installation, construction, landscaping and maintenance of the walking trails for the Development, over and upon any portion of the Development containing such walking trails as may be shown on one or more recorded subdivision plats for the Development. The easement herein granted shall permit joint usage of such easement by the Owners and Occupants and the general public. Declarant hereby expressly reserves for itself, its successors and assigns, all rights and privileges incident to the ownership of the fee simple estate of the walking trails which are not inconsistent with the rights and privileges herein granted, including, without limitation, the right to grant additional non-exclusive easements to third parties, over, under and across the walking trails and the right to relocate the walking trails on Common Property without the consent of any other Person.

10.10 Easement for Private Streets, Sidewalks and Signs. Declarant hereby grants, conveys, declares, creates, imposes and establishes a perpetual, non-exclusive right-of-way easement for vehicular and pedestrian access, ingress and egress over and across the private streets located within the Development. At such time as one or more subdivision plats for the property submitted to this Declaration are recorded in the real estate records of the Office of the Clerk of Superior Court of Cherokee County, Georgia, any reference to private streets shall then and thereafter mean a reference to the private streets as actually constructed and depicted on the recorded subdivision plat(s). The right-of-way easement herein granted shall permit joint usage

of such easement by (a) the Owners and Occupants, (b) the legal representatives, successors and assigns of the Owners, and (c) guest, invitees and licensees of the Owners and Occupants. Declarant hereby expressly reserves for itself, its successors and assigns, all rights and privileges incident to the ownership of the fee simple estate of any right-of-way easement area which are not inconsistent with the rights and privileges herein granted, including, without limitation, the right to maintain one or more proprietary signs on the easement area and the right to grant additional non-exclusive easements to third parties, over, under and across the easement area. Declarant hereby reserves for the benefit of Declarant and grants to the Association as Common Property, the perpetual nonexclusive right and easement upon, over and across those utility easement areas and private streets and roads for the installation, maintenance, and use of such streets and roads, sidewalks, traffic directional signs, grading for proper drainage of said streets and roads, and related activities and improvements.

10.11 Easement for Limited Common Property. Declarant, as the owner of all of the property in the Development, hereby reserves for the benefit of any applicable Unit an easement of access, ingress, egress, use and enjoyment across that portion of the Common Property designated as Limited Common Property as provided herein. Such Limited Common Property may be used and enjoyed exclusively by the Owner of such benefited Unit in any manner and for any purpose permitted by this Declaration, including such purposes as general recreation; provided, however, each Owner shall comply with the use restrictions contained herein and rules adopted by the Board of Directors and obtain prior written approval in accordance with Article 6 hereof prior to installing any structures or improvements, including landscaping improvements except for those improvements which may be installed without approval as provided herein or in accordance with the Architectural Guidelines. The easement granted herein shall be appurtenant to and run with title to such benefited Unit for the benefit of the Owner of said Unit but shall not be sold, mortgaged, leased or otherwise granted or conveyed separate and apart from such benefited Unit.

## Article 11

### Use of Recreational Facilities by Nonmembers

11.1 Rights Reserved by Declarant. Declarant shall have the right to grant to Persons who are not members of the Association the right to use and enjoy the club house and recreational facilities located in the Development. The extent and duration of nonmember use and the fee to be charged therefor, if any, shall be determined solely by Declarant. Nonmember user fees, if any, shall be paid to the Association. Any use rights granted to nonmembers may not be terminated by the Association so long as the terms and conditions imposed upon nonmember use by Declarant are complied with by the nonmember user. The reserved rights herein shall include the right to allow local civic groups to use the club house without charge.

11.2 Right and Easement of Use. Declarant hereby expressly reserves unto itself, its successors and assigns a non-exclusive, perpetual right, privilege and easement with respect to the Development for the benefit of Declarant, its successors, assigns and the above discussed nonmember users, over, under, in and/or on the Development (including, without limitation, the above described recreational facilities), without obligation and without further charge to the foregoing, for the purposes of taking all actions related to or connected with the granting of

nonmember use and the use of club house and recreational facilities by such nonmembers as described above. Such right, privilege and easement shall include, without limitation, the right of access, ingress, use and egress to and from the above described recreational facilities and the right of access, ingress to, use and egress from for vehicular and pedestrian traffic over, under, on and across the roads, parking areas and walkways in the Development.

11.3 Remedy of Association Upon Failure to Pay User Fees. Declarant shall not be liable for and is hereby held harmless from any failure of any nonmember to pay a nonmember user fee to the Association where required to do so by this Section. In such case, the Association's sole remedy shall be to suspend the right of the nonmember to use the recreational facilities who has not timely paid until all amounts owed are paid. Declarant shall also not be liable for and is hereby held harmless from any personal injury or property damage caused by nonmembers, their family, guests and invitees, exercising any rights hereunder. The provisions of this Section shall apply notwithstanding any contrary provisions in this Declaration, the Bylaws, Articles of Incorporation, rules and regulations, use restrictions and any amendments to any of the foregoing.

11.4 Right of Association to Grant Nonmember Use Rights. After the Declarant's rights under the Declaration terminate as provided below, the Association, acting by and through the Board of Directors, without a vote of the members, shall be entitled to exercise the same rights reserved to the Declarant in this Article and this Article, or portions thereof, as the case may be, shall be read and interpreted as if any reference to the authority of or action by the Declarant in this Article 11 were a reference to the authority of or action by the Board of Directors.

## Article 12 General Provisions

12.1 Enforcement. Each Owner and Occupant shall comply strictly with the Bylaws, rules and regulations and use restrictions, as amended or modified from time to time, and with the covenants, conditions, easements and restrictions set forth in this Declaration, the recorded subdivision plats for the Development and in the deed to such Owner's Unit. The Board of Directors may impose fines or other sanctions for violations of the foregoing, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the Bylaws or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief or both, including, without limitation, reasonable attorney's fees actually incurred, maintainable by the Association, the Declarant or an aggrieved Owner. Failure by the Declarant, the Association or the officers, agents, directors and employees of either of them or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Association shall have the right to record in the appropriate land records a notice of violation of the Declaration, Bylaws, rules and regulations, use restrictions or design guidelines and to assess the cost of recording and removing such notice against the Unit of the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

12.2 Occupants Bound. All provisions of the Declaration, Bylaws, rules and regulations, use restrictions and design guidelines which govern the conduct of Owners and which provide

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

12.3 Self-Help. In addition to any other remedies provided for herein, the Association, the Declarant, or their respective duly authorized agents shall have the power to enter upon any Unit or any other portion of the Development to abate or remove any structure, thing or condition which violates this Declaration, the Bylaws, the rules and regulations or the use restrictions. Unless an emergency situation exists, the violating Owner shall be given ten (10) days written notice of the intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after giving any notice required herein or by law. All costs of self-help, including, without limitation, reasonable attorney's fees actually incurred, shall be assessed against the violating Owner as a specific assessment and the Association, Declarant or their respective duly authorized agents shall not be liable for any claim of damage arising from the rights granted pursuant to this Section 12.3.

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

12.5 Termination of Rights of Declarant. The rights of Declarant to take, approve or consent to actions under this Declaration, the Articles of Incorporation and the Bylaws shall cease and be of no further force and effect upon the earlier of: (a) the date that the Declarant and/or its affiliates no longer own any property in the Development and Declarant no longer has the right to unilaterally annex additional property to the Development as provided herein and a certificate of occupancy has been issued for a structure on each Unit in the Development; or (b) the date of recording by Declarant in the real estate records of the county where the Development is located of a written instrument terminating all of Declarant's rights hereunder.

12.6 Termination of Rights of Approved Builder. The rights of Approved Builder to take, approve or consent to actions under this Declaration shall cease and be of no further force and effect upon the earlier of: (a) the date that Approved Builder no longer owns any property in the Development and no longer has the option pursuant to a contract to acquire additional

property within the Development; or (b) the date of recording by Approved Builder in the real estate records of the county where the Development is located of a written instrument terminating all of Approved Builder's rights hereunder.

12.7 Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Units subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, without limitation, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Units subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or private insurance company, including, without limitation, the U.S. Department of Housing and Urban Development and the U.S. Department of Veterans Affairs, to insure or guarantee Mortgage loans on the Units subject to this Declaration. Further, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owners hereunder to use and enjoy their Unit without the consent of the affected Owner. The Board of Directors, with the written consent of the Declarant and without a vote of the members, may amend this Declaration for the sole purpose of electing to be governed by the provisions of the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, *et seq.* In addition to the above, this Declaration may be amended upon the affirmative vote or written consent or any combination thereof of the Owners of at least two-thirds (2/3) of the Units and the consent of Declarant; provided, however, Article 8 of this Declaration regarding the Townhome Units shall be amended as provided in Section 8.7 hereof. Amendments to this Declaration shall become effective upon recordation unless a later effective date is specified therein. The consent of the Declarant to any amendment shall be evidenced by the execution of said amendment by Declarant. The consent of the requisite number of Owners to any amendment shall be evidenced by the execution of the amendment by said Owners, or, in the alternative, the sworn statement of the President or any Vice President or the Secretary of the Association attached to or incorporated in the amendment, which sworn statement states unequivocally that the consent of the required number of Owners was obtained and that any notices required by this Declaration, the Bylaws, the Articles of Incorporation and Georgia law were given. The amendments authorized by this Section may be of uniform or non-uniform application and Owners shall be deemed to have agreed that the Declaration may be amended as provided herein and that any rule of law requiring unanimous approval of amendments having a non-uniform application shall not apply.

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

12.9 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.

12.10 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.

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

12.12 Preparer. This Declaration was prepared by David N. Dorough, Jr. and Katherine A. Dyott, Dorough & Dorough, LLC, Attorneys at Law, 160 Clairemont Avenue, Suite 650, Decatur, Georgia 30030.

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

12.14 Perpetuities. Should any of the provisions of this Declaration be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the date that is ninety (90) years from and after the date of recording of this Declaration

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

12.16 Security. ALL OWNERS, OCCUPANTS, GUESTS, LICENSEES, AND INVITEES, AS APPLICABLE, ACKNOWLEDGE THAT THE DECLARANT, APPROVED BUILDER, THE ASSOCIATION, AND THE BOARD OF DIRECTORS, THE MODIFICATIONS COMMITTEE, IF ANY, AND THE ARCHITECTURAL REVIEW COMMITTEE, IF ANY, DO NOT REPRESENT OR WARRANT THAT ANY SAFETY OR

SECURITY MEASURES WILL BE IMPLEMENTED IN THE DEVELOPMENT OR, IF IMPLEMENTED, THAT SUCH SAFETY OR SECURITY MEASURES MAY NOT BE COMPROMISED OR CIRCUMVENTED, OR THAT ANY SUCH SAFETY OR SECURITY MEASURES WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THEY ARE DESIGNED. EACH OWNER, OCCUPANT, GUEST, LICENSEE, OR INVITEE ACKNOWLEDGES AND UNDERSTANDS THAT THE DECLARANT, APPROVED BUILDER, THE ASSOCIATION, THE BOARD OF DIRECTORS, THE MODIFICATIONS COMMITTEE, IF ANY, AND THE ARCHITECTURAL REVIEW COMMITTEE, IF ANY, ARE NOT INSURERS AND THAT EACH OWNER, OCCUPANT, GUEST, LICENSEE, AND INVITEE ASSUMES ALL RISKS OF PERSONAL INJURY AND PROPERTY DAMAGE AND FURTHER ACKNOWLEDGES THAT THE DECLARANT, APPROVED BUILDER, THE ASSOCIATION, THE BOARD OF DIRECTORS, THE MODIFICATIONS COMMITTEE, IF ANY, AND THE ARCHITECTURAL REVIEW COMMITTEE, IF ANY, HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, OCCUPANT, GUEST, LICENSEE, OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE RELATIVE TO ANY SAFETY OR SECURITY MEASURES IMPLEMENTED OR APPROVED.

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

12.18 Agreements. Subject to the prior approval of Declarant, 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 Development or the privilege of possession and enjoyment of any part of the Development.

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

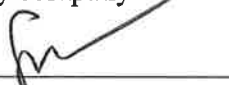
12.20 Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least seventy-five percent (75%) of the Total Association Vote and the consent of the Declarant. This Section shall not apply to (a) actions brought by the Association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

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

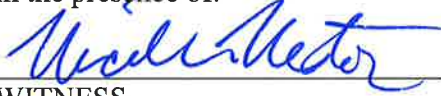
[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Declarant herein hereby executes this instrument under seal, this 2 day of December, 2015.

DECLARANT: **BREEZY HILL LAND, LLC**, a Georgia limited liability company

By:  (SEAL)  
Name: Steward A. Sparks  
Title: Manager

Signed, sealed, and delivered  
in the presence of:

  
WITNESS

  
NOTARY PUBLIC

My Commission Expires: 9/10/2016

[AFFIX NOTARY SEAL]


**LARA D. HUTSON**  
NOTARY PUBLIC  
MY COMMISSION EXPIRES SEPTEMBER 10, 2016  
COBB COUNTY, GEORGIA

CONSENT OF LIEN HOLDER

THE BRAND BANKING COMPANY, a Georgia banking corporation ("Lender"), as holder of: (a) that certain Deed to Secure Debt and Security Agreement, dated July 14, 2014 and recorded July 16, 2014 in Deed Book 12924, Page 141, *et seq.*, Cherokee County, Georgia land records; and (b) that certain Deed to Secure Debt and Security Agreement, dated March 31, 2015 and recorded April 6, 2015 in Deed Book 13241, Page 195, *et seq.*, Cherokee County, Georgia land records (hereinafter collectively referred to as the "Security Instruments"), encumbering all or a portion of the property described in Exhibit "A" hereof, hereby consents to the Declaration and agrees that any foreclosure of the security title and interest under Security Instruments or any other instrument that Lender holds shall be subject to the Declaration and any amendments thereto with respect to the property described in Exhibit "A".

This 9 day of December, 2015.

LENDER: **THE BRAND BANKING COMPANY**, a  
Georgia banking corporation

By:  (SEAL)  
Print Name: John H. Barnard, III  
Title: Senior Vice President

Signed, sealed, and delivered  
in the presence of:

  
WITNESS

  
NOTARY PUBLIC

My Commission Expires: 8-7-16

[NOTARY SEAL]

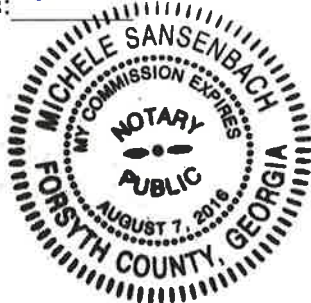


EXHIBIT "A"  
Property Description

ALL THAT TRACT OR PARCEL of land lying and being in Land Lots 1140, 1141 and 1142 of the 15<sup>th</sup> District, 2<sup>nd</sup> Section, of Cherokee County, Georgia and being more particularly described as follows:

To find the POINT OF BEGINNING, commence at the point of intersection of the Northern right of way of Ingram Street (20 feet right of way) and the Southwesterly right of way of GA Highway 5 (Main Street)(60 feet right of way); run thence 145.17 feet southerly along the Western right of way of GA Highway 5 to a 1/2" rebar found, being the POINT OF BEGINNING; continuing thence along said right of way South 07 degrees 23 minutes 00 seconds East a distance of 531.56 feet to a point; continuing along the said right of way in an arc to the right an arc distance of 133.66 feet (said arc having a radius of 10,652.92 feet and being subtended by a chord bearing South 07 degrees 01 minutes 22 seconds East and having a length of 133.66 feet); run thence North 89 degrees 37 minutes 47 seconds West a distance of 14.59 feet to a point; run thence along an arc to the right an arc distance of 105.31 feet (said arc having a radius of 3,306.42 feet and being subtended by a chord bearing South 07 degrees 13 minutes 02 seconds East and having a length of 105.31 feet) to a point; run thence South 06 degrees 18 minutes 12 seconds East a distance of 90.69 feet to a point; run thence South 86 degrees 24 minutes 53 seconds West a distance of 58.52 feet to a point; run thence South 02 degrees 50 minutes 56 seconds East a distance of 15.20 feet to a point; thence leaving said right of way South 86 degrees 00 minutes 44 seconds West a distance of 197.24 feet to a 1/2" rebar found; run thence South 02 degrees 49 minutes 36 seconds East a distance of 87.13 feet to a 1/2" rebar found; run thence North 88 degrees 55 minutes 27 seconds West along the South Land Lot line of Land Lot 1140 a distance of 790.36 feet to a 1/2" rebar found; continuing thence along the South Land Lot line of Land Lots 1140 and 1141 North 88 degrees 56 minutes 19 seconds West a distance of 444.20 feet to a 1/2" OTP found; continuing thence along the South Land Lot line of Land Lots 1141 and 1142 North 88 degrees 26 minutes 50 seconds West a distance of 1,570.22 feet to the point of intersection of the South Land Lot line of Land Lot 1142 and the apparent center line of Noonday Creek; run thence along the apparent center line of Noonday Creek North 00 degrees 33 minutes 03 seconds West a distance of 234.69 feet to a point; run thence along the apparent center line of Noonday Creek North 00 degrees 46 minutes 08 seconds West a distance of 80.38 feet to a point; run thence along the apparent center line of Noonday Creek North 06 degrees 15 minutes 26 seconds West a distance of 182.20 feet to a point; run thence along the apparent center line of Noonday Creek North 02 degrees 30 minutes 02 seconds East a distance of 133.01 feet to a point; run thence along the apparent center line of Noonday Creek North 04 degrees 17 minutes 29 seconds West a distance of 121.38 feet to a point; run thence along the apparent center line of Noonday Creek North 05 degrees 42 minutes 10 seconds East a distance of 140.78 feet to a point; run thence along the apparent center line of Noonday Creek North 03 degrees 40 minutes 56 seconds West a distance of 86.14 feet to a point; run thence along the apparent center line of Noonday Creek North 06 degrees 03 minutes 44 seconds East a distance of 145.93 feet to a point; run thence along the apparent center line of Noonday Creek North 20 degrees 30 minutes 03 seconds East a distance of 97.28 feet to a point; run thence along the apparent center line of Noonday Creek North 30 degrees 54 minutes 27 seconds East a distance of 87.05 feet to a point;

EXHIBIT "A" (Continued)

Property Description

run thence along the apparent center line of Noonday Creek North 17 degrees 34 minutes 00 seconds East a distance of 69.62 feet; thence leaving the apparent center line of Noonday Creek and running along the North Land Lot line of Land Lots 1142, 1141 and 1140 South 87 degrees 55 minutes 48 seconds East a distance of 2,217.34 feet to a 1/4" rebar found (nail set at base) on the North Land Lot line of Land Lot 1140; thence leaving the North Land Lot line of Land Lot 1140 run thence South 10 degrees 46 minutes 39 seconds East a distance of 236.74 feet to a 1/2" rebar found (nail set at base); run thence North 89 degrees 05 minutes 33 seconds East a distance of 169.54 feet to an iron pin; run thence South 11 degrees 12 minutes 09 seconds East a distance of 179.04 feet to a rock post; run thence North 84 degrees 12 minutes 36 seconds East a distance of 401.24 feet to a 1/2" rebar found, being the POINT OF BEGINNING.

Said property consists of Tract A, Tract B, and Tract C, as shown on ALTA survey dated June 28, 2007 by McFarland-Dyer & Associates for Old Republic National Title Insurance Company *et al.*, certified by J. Chris Whitley, GRLSN 2672.

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

All that tract or parcel of land lying and being in Land Lots 1139, 1140, 1141, 1142, 1164, 1165 and 1166 of the 15<sup>th</sup> District, 2ND Section, Cherokee County, Georgia.



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EXHIBIT "C"

BYLAWS  
OF  
SOUTH ON MAIN COMMUNITY ASSOCIATION, INC.

Prepared By:  
David N. Dorough and Katharine A. Dyott  
DOROUGH & DOROUGH, LLC  
Attorneys at Law  
160 Clairemont Avenue  
Suite 650  
Decatur, Georgia 30030  
(404) 687-9977

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BYLAWS  
OF  
SOUTH ON MAIN COMMUNITY ASSOCIATION, INC.

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BYLAWS  
OF  
SOUTH ON MAIN COMMUNITY ASSOCIATION, INC.

Article 1

Name, Membership, Applicability and Definitions

1.1 Name. The name of the corporation shall be South on Main Community Association, Inc. (hereinafter sometimes referred to as the "Association").

1.2 Membership. The Association shall have one class of membership, as is more fully set forth in that certain Master Declaration of Protective Covenants, Conditions, Restrictions and Easements for South on Main (such Declaration, as amended, supplemented, renewed, or extended from time to time, is hereinafter sometimes referred to as the "Declaration"), the terms of which pertaining to membership are specifically incorporated by reference herein.

1.3 Definitions. The words used in these Bylaws shall have the same meaning as set forth in the Declaration, unless the context shall prohibit, or the meanings given in the Georgia Nonprofit Corporation Code (O.C.G.A. Section 14-3-101, *et seq.*) (the "Nonprofit Code"). Statutory references shall be construed as meaning the referenced statute or portion thereof as the same may exist from time to time.

Article 2

Association: Meetings, Quorum, Voting, Proxies

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

2.2 Annual Meetings. There shall be an annual meeting of the members at such date, place and time as the Board of Directors shall determine to receive the reports of the outgoing Board of Directors, to install directors for the ensuing year and to transact such other business as may come before the meeting.

2.3 Special Meetings. The President or the Board of Directors may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association upon the delivery of a petition signed and dated by members entitled to cast at least twenty-five percent (25%) of the Total Association Vote and describing the purpose or purposes for which it is to be held. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose(s) thereof. No business shall be transacted at a special meeting, except those matters that are within the purpose or purposes described in the notice.

2.4 Record Date. The Board of Directors shall fix in advance a record date for a determination of members entitled to notice of and to vote at any meeting of members or any adjournment thereof, or to make a determination of members for any other purpose, such date to be not more than seventy (70) days before the date on which the particular action requiring such determination of members is to be taken.

2.5 Notice of Meetings. It shall be the duty of the Secretary or such other agent as the Association may designate to mail or to cause to be delivered, in a fair and reasonable manner, to each member (as shown in the records of the Association as of the record date) a written notice of each annual or special meeting of the Association stating the date, time and place where it is to be held and, if and to the extent required by the Nonprofit Code or other applicable law (the "Governing Law"), the purpose(s) thereof. Such notice shall be delivered personally, sent by United States mail, postage prepaid, statutory overnight delivery, or sent by electronic transmission in accordance with the Nonprofit Code to all members of record at the address shown in the Association's current records. If an Owner wishes notice to be given at an address other than the Unit, the Owner shall designate by notice in writing to the Secretary such other address. Notices shall be mailed or delivered not less than ten (10) days (or if notice is mailed by other than first-class or registered mail, thirty (30) days) nor more than sixty (60) days in advance of any annual, regularly scheduled or special meeting. If any meeting of the members is adjourned to a different date, time or place, notice need not be given of the new date, time or place, if the new date, time or place is announced at the meeting before adjournment. If, however, a new record date is or must be fixed under the Governing Law, notice of the adjourned meeting shall be given to persons who are members of record as of the new record date.

2.6 Waiver of Notice. Waiver of notice of a meeting of the members shall be deemed the equivalent of proper notice. Any member may, in writing signed by the member entitled to notice and delivered to the Association for inclusion in the minutes for filing with the Association's records, waive notice of any meeting of the members, either before or after such meeting. Attendance at a meeting by a member, whether in person or by proxy, shall be deemed waiver by such member of lack of notice or defective notice, unless such member specifically objects to lack of proper notice at the time the meeting is called to order.

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

2.8 Membership List. After the record date for any meeting is established by the Board of Directors, the Secretary shall prepare an alphabetical list of the names and addresses of all of the members who are entitled to notice of the meeting. Beginning at least two (2) business days after notice is given of the meeting for which the list was prepared, the list of members shall be available for inspection by any member or a member's agent or attorney: (1) on a reasonably accessible electronic network, provided that the information required to gain access to such list is

included with the notice of the meeting or upon request; or (2) during ordinary business hours at the Association's principal office or at such other reasonable place as may be specified in the notice in the city where the meeting will be held. In the event that the Association makes the list available on an electronic network, the Association may take reasonable steps to ensure that such information is available only to members of the Association. In addition, the list shall be available for inspection at the meeting or any adjournment thereof.

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

2.10 Proxies. At all meetings of members, each member may vote in person or by proxy. All proxy appointment forms shall be in writing, signed either personally or by an electronic transmission, dated, and filed with the Secretary before the appointed time of each meeting. An electronic transmission must contain or be accompanied by information acceptable to the Board from which it can be determined that the member, the member's agent, or the member's attorney-in-fact authorized the electronic transmission. Proxies may be delivered to the Board of Directors by personal delivery, U.S. mail or electronic transmission to the Secretary or other officer or agent authorized to tabulate votes. Every proxy shall be revocable and shall automatically cease upon: (a) receipt of notice by the Secretary of the death or judicially declared incompetence of a member; (b) receipt by the Secretary or other officer or agent authorized to tabulate votes of written revocation signed by the member; (c) receipt by the Secretary or other officer or agent authorized to tabulate votes of a subsequent appointment form signed by the member; (d) attendance by the member and voting in person at any meeting; or (e) the expiration of eleven (11) months from the date of the proxy appointment form.

2.11 Quorum. The presence, in person or by proxy, of members entitled to cast at least twenty-five percent (25%) of the votes entitled to be cast at the meeting shall constitute a quorum at all meetings of the Association. The members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

2.12 Action By Written Consent. Any action required or permitted to be approved by the members may be approved without a meeting if one (1) or more consents, in writing, setting forth the action so taken, shall be signed and dated by members (including the Declarant, if the consent of the Declarant is required) holding the voting power required to pass such action at a meeting held on the record date for such action. The record date for such action shall be the date that the first member signs a consent. Such action shall be approved when the Secretary receives a sufficient number of such consents dated within seventy (70) days of the record date for such action. If less than unanimous consent is obtained, the approval shall be effective ten (10) days after the Secretary gives written notice of the approval to all members who did not sign a consent. Each written consent shall be included in the minutes of meetings of members filed in the permanent records of the Association. No written consent shall be valid unless: (1) the consenting member has been furnished the same material that, pursuant to the Nonprofit Code, would have been required to be sent to members in a notice of a meeting at which the proposed action would have been submitted to the members for action; or (2) the written consent contains an express waiver of the right to receive the material otherwise required to be furnished.

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

### Article 3

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

3.1 Governing Body; Composition. The affairs of the Association shall be governed by a Board of Directors. Directors shall be natural persons who are eighteen (18) years of age or older. Except for directors appointed by the Declarant, each director must reside in the Development and be a member or the spouse of a member; provided, however, no Person may serve on the Board at the same time with such Person's spouse or any co-Owner or Occupant of such Person's Unit.

3.2 Directors Appointed by Declarant. The Declarant shall have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association until such time as the first of the following events shall occur: (a) the date that the Declarant no longer owns any property in the Development and no longer has the right to unilaterally annex additional property to the Development as provided in the Declaration and a certificate of occupancy has been issued for every structure on each Unit in the Development; or (b) the surrender by Declarant in writing of the authority to appoint and remove directors and officers of the Association. The directors appointed by the Declarant need not be Owners or residents in the Development.

3.3 Number of Directors. During the period that the Declarant has the right to appoint and remove the officers and directors of the Association as provided above, the Board of Directors shall consist of one (1) to three (3) members as determined by Declarant in writing from time to time. Thereafter, the Board shall consist of five (5) directors, who shall be elected as provided in Section 3.5 below.

3.4 Nomination of Directors. Elected directors may be nominated from the floor, if a meeting is held for the election of directors and may also be nominated by a nominating

committee, if established by the Board. All candidates shall have a reasonable opportunity to communicate their qualifications to the members and to solicit votes.

3.5 Election and Term of Office. After the Declarant's right to appoint directors and officers terminates, the Association shall call a special meeting (or take action under Section 2.12 or Section 2.13 in lieu of a meeting) and the members shall elect five (5) directors as follows: the initial term of three (3) directors shall be fixed at two (2) years and the initial term of two (2) directors shall be fixed at one (1) year. Thereafter, all successors shall be elected to a term of two (2) years. At annual meetings thereafter (or pursuant to Section 2.12 or Section 2.13 in lieu of a meeting), directors shall be elected as necessary to fill vacant seats on the Board and to preserve the scheme of staggered terms with one or more directors being elected each year. All eligible members of the Association may vote on all directors to be elected, and the candidates receiving the most votes shall be elected. Notwithstanding anything herein to the contrary, the members of the Board of Directors shall continue in office until their respective successors shall have been elected and take office.

3.6 Removal of Directors. At any annual, regular or special meeting of the Association, any one (1) or more of the members of the Board of Directors elected by the members 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. The notice of the meeting shall state that the purpose or one of the purposes of the meeting is removal of a director. A director whose removal by the members has been proposed shall be given an opportunity to be heard at the meeting. Additionally, any director who has three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of an assessment for more than thirty (30) days may be removed by a majority vote of the remaining directors. This Section shall not apply to directors appointed by the Declarant.

3.7 Vacancies. Vacancies in the Board of Directors caused by any reason, excluding the removal of a director by vote of the Association, shall be filled by a vote of the majority of the remaining directors. Each Person so selected shall serve the unexpired portion of the term.

3.8 Organization Meetings. The first meeting of a newly elected Board of Directors shall be held within ten (10) days after the election at such time and place as the directors may conveniently assemble.

3.9 Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by the Board, provided that, after the right of Declarant to appoint the directors terminates, at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter. Notice of the regular schedule shall constitute sufficient notice of such meetings.

3.10 Special Meetings. Special meetings of the Board of Directors shall be held when requested by the President, Vice President or by any two (2) directors. The notice shall specify the date, time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by one of the following methods: (a) by personal delivery (including commercial delivery service) to such director's home or office; (b) written



notice by first class mail, postage prepaid; (c) by telephone communication (including facsimile), either directly to the director or to the director's home or office; or (d) issued electronically in accordance with the Nonprofit Code, if the director has consented in writing to such method of delivery and has provided the Board with an address regarding the same. All such notices shall be given or sent to the director's address or telephone number as shown on the records of the Association. Notices sent by first class mail shall be deposited with the U.S. Postal Service at least four (4) days before the date of the meeting. Notices given by personal delivery, electronic transmission or telephone shall be given at least two (2) days before the day of the meeting.

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

3.12 Quorum of Board of Directors. At all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors.

3.13 Compensation. No director shall receive any compensation from the Association for acting as such.

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

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

3.16 Action Without A Formal Meeting. Any action required or permitted to be taken at a meeting of the directors may be taken without a meeting if one or more written consents, setting forth the action so taken, shall be signed by a majority of the directors and delivered to the Association for inclusion in the minutes for filing in the corporate records. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

3.17 Telephonic Participation. One or more directors may participate in and vote during any meeting of the Board by telephone conference call or any other means of communication by

which all directors participating may simultaneously hear each other during the meeting. Any such meeting at which a quorum participates shall constitute a meeting of the Board.

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

- (a) preparing and adopting an annual budget in which there shall be established the contribution of each member to the common expenses;
- (b) making assessments to defray the common expenses and establishing the means and methods of collecting such assessments;
- (c) providing for the operation, care, upkeep, and maintenance of all areas which are the maintenance responsibility of the Association;
- (d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;
- (e) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association;
- (f) making and amending rules and regulations;
- (g) opening bank accounts on behalf of the Association and designating the signatories required;
- (h) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules and regulations and Architectural Guidelines adopted by it, and bringing any proceedings which may be instituted on behalf of or against the members concerning the Association, which enforcement power shall include, without limitation, the power to levy fines as provided herein and in the Declaration in such amounts as from time to time the Board may deem proper in the circumstances, counting each day a violation continues after notice from the Board as a separate violation;
- (i) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

(j) keeping books with detailed accounts of the receipts and expenditures of the Association and the actions thereof, and specifying the maintenance and repair expenses and any other expenses incurred; and

(k) authorizing contracts on behalf of the Association.

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

3.20 Borrowing. The Board of Directors shall have the power to borrow money without the approval of the members of the Association; provided, however, except as otherwise provided in the Declaration, the Board shall obtain membership approval in the same manner as for special assessments, in the event that the total amount of such borrowing exceeds or would exceed ten percent (10%) of the annual budget of the Association.

3.21 Fining Procedure. A fine shall not be imposed (a late charge shall not constitute a fine) unless and until the following procedure is followed:

(a) Written notice shall be delivered to the member in accordance with Article 12, Section 12.12 of the Declaration to the address of the member shown on the Association's records, specifying:

- (1) the nature of the violation, the fine to be imposed and the date, not less than ten (10) days or, in the event of an unapproved sign, twenty-four (24) hours, from the date of the notice, that the fine will take effect;
- (2) that the violator may, within ten (10) days or, in the event of an unapproved sign, twenty four (24) hours, from the date of the notice, request a hearing in writing regarding the fine imposed;
- (3) the name, address and telephone number of a person to contact to challenge the fine;
- (4) that any statements, evidence, and witnesses may be produced by the violator at the hearing; and
- (5) that all rights to have the fine reconsidered are waived if a hearing is not requested within ten (10) days or, in the event of an unapproved sign, twenty-four (24) hours, of the date of the notice.

(b) If a hearing is requested within the requisite time provided above, it shall be held before the Board in executive session, and the violator shall be given a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing. No fine shall be imposed prior to the date that is five (5) days or, in the event of an unapproved sign, twenty-four (24) hours, after the date of the hearing, as applicable.

(c) Within twelve (12) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the violation recurs, the Board may, upon notice stating the nature of the violation and delivered to the member by first class or certified mail sent to the address of the member shown on the Association's records, impose a fine.

#### Article 4 Officers

4.1 Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer. Any two (2) or more offices may be held by the same Person, excepting the offices of President and Secretary. The President and Treasurer shall be elected from among the members of the Board of Directors. This provision shall not apply to officers appointed by the Declarant.

4.2 Election, Term of Office, and Vacancies. Except during the period in which the Declarant has the right to appoint the officers of the Association, the officers of the Association shall be appointed annually by the Board of Directors at the first meeting of the Board of Directors following the election of directors. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

4.3 Additional Officers and Agents. The Board of Directors may appoint such other officers, including vice presidents, assistant secretaries and assistant treasurers, and agents as it shall deem necessary. Such officers and agents shall hold their respective offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors.

4.4 Salaries. The officers shall receive no compensation.

4.5 Removal. Except for officers appointed by the Declarant, any officer may be removed, with or without cause, by the Board of Directors.

4.6 President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the members and directors. The immediate supervision of the affairs of the Association shall be vested in the President. It shall be the President's duty to attend to the business of the Association and maintain strict supervision over all of its affairs and interests. The President shall keep the Board of Directors fully advised about the affairs and conditions of the Association, and shall manage and operate the business of the Association

pursuant to and in accordance with such policies as may be prescribed from time to time by the Board of Directors.

4.7 Vice President. The Vice President(s), if any, shall act in the President's absence or disability and shall have all powers, duties, and responsibilities provided for the President when so acting, and shall perform such other duties as shall from time to time be imposed upon any Vice President by the Board or delegated to a Vice President by the President.

4.8 Secretary. The Secretary shall keep the minutes of all meetings of the members and of the Board of Directors; notify the members and directors of meetings as provided by these Bylaws and Georgia law; have custody of the seal of the Association; affix such seal to any instrument requiring the same; attest the signature or certify the incumbency or signature of any officer of the Association; and perform such other duties as the President, or the Board of Directors may prescribe. The Secretary shall perform the duties of the Treasurer of the Association in the absence or disability of the Treasurer.

4.9 Treasurer. The Treasurer shall keep, or cause to be kept, the financial books and records of the Association, and shall faithfully account for the Association's funds, financial assets, and other assets entrusted to the Treasurer's care and custody. The Treasurer shall make such reports as may be necessary to keep the President and the Board of Directors informed at all times as to the financial condition of the Association, and shall perform such other duties as the President, or the Board of Directors may prescribe. The Treasurer shall maintain the money and other assets of the Association in the name and to the credit of the Association in such depositories as may be designated by the Board of Directors. The Treasurer may provide for the investment of the money and other assets of the Association consistent with the needs of the Association to disburse such money and assets in the course of the Association's business. The Treasurer shall perform the duties of the Secretary of the Association in the absence or disability of the Secretary.

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

## Article 5 Committees

Advisory, standing and Ad Hoc committees to perform such tasks and to serve for such periods as may be designated by the Board or as provided in the Declaration are hereby authorized. Each such committee shall be composed and shall operate in accordance with the terms of the Declaration or resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors. An advisory, standing or Ad Hoc committee shall not be authorized to exercise any authority of the Board under the Articles of Incorporation, the Declaration, these Bylaws or the Nonprofit Code except as expressly provided therein.

Article 6  
Miscellaneous

6.1 Fiscal Year. The fiscal year of the Association shall be the calendar year unless otherwise determined by resolution of the Board.

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

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

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

6.5 Amendment. These Bylaws may be amended by the Board of Directors, with the consent of the Declarant, if such amendment is necessary to: (a) bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) enable any title insurance company to issue title insurance coverage with respect to the Units subject to the Declaration; (c) enable an institutional or governmental lender or purchaser of mortgage loans, including, without limitation, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make or purchase Mortgage loans on the Units subject to the Declaration; (d) enable any governmental agency or private insurance company to insure or guarantee Mortgage loans on the Units subject to the Declaration; or (e) comply with the provisions of the Georgia Property Owners' Association Act, O.C.G.A. § 44-3-220, *et seq.* Declarant may unilaterally amend these Bylaws for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owner to use such Owner's Unit without the consent of the affected Owner nor shall it adversely affect the rights of the holder of any security interest granted by Declarant without the written consent of such holder. In addition, these Bylaws may be amended upon the affirmative vote, written consent or any combination of affirmative vote and written consent of at least two-thirds (2/3) of the Total Association Vote and the consent of Declarant.