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MASTER DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR  
ROSWELL COURT

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THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP OWNERS ASSOCIATION BUT DOES NOT SUBMIT THE DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNERS' ASSOCIATION ACT, O.C.G.A. § 44-3-220, *ET SEQ.* NOR DOES IT SUBMIT THE DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA CONDOMINIUM ACT, O.C.G.A. § 44-3-70, *ET SEQ.*

MASTER DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS

FOR

ROSWELL COURT

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**EXHIBITS**

**EXHIBIT "A"** - PROPERTY SUBJECT TO THE DECLARATION

**EXHIBIT "B"** - ADDITIONAL PROPERTY WHICH MAY BE UNILATERALLY SUBMITTED TO THIS  
DECLARATION BY DECLARANT **Deed Book 57955 Pg 256**

**EXHIBIT "C"** - PARKING SPACES

**EXHIBIT "D"** - BYLAWS OF ROSWELL COURT COMMUNITY ASSOCIATION, INC.

MASTER DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS

FOR

ROSWELL COURT

THIS DECLARATION is made on the date hereinafter set forth by **JWNSP ROSWELL, 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 of the real property described in Exhibit "A" hereof;  
and

WHEREAS, the real property described in Exhibit "A" hereof is subject to the provisions of this Declaration which provides for a general plan for the development and improvement of Roswell Court in an orderly manner with appropriate architectural, landscaping, construction, development and landscaping controls to maintain the value, aesthetic appearance and architectural harmony of Roswell Court 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 Owner who has been designated as an "Approved Builder" pursuant to a written instrument executed by Declarant and is therefore entitled to the benefits and rights afforded to Approved Builders under this Declaration. Declarant may designate one or more Owners as an Approved Builder and rights of Approved Builder

hereunder shall apply only to the Units which are acquired by that Approved Builder. The rights of Approved Builder shall terminate as provided in Section 10.6 hereof.

1.2 "Articles of Incorporation" means the Articles of Incorporation of Roswell Court 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 Roswell Court 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 operate and 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 Roswell Court Community Association, Inc., attached to this Declaration as Exhibit "D" and incorporated herein by this reference as may be amended from time to time.

1.6 "Commercial Condominium Unit" means a Condominium Unit used for commercial purposes in accordance with the terms and conditions set forth herein.

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" means that certain mixed use two-story building in the Development which will constitute a condominium in accordance with the provisions of the Georgia Condominium Act (O.C.G.A. 44-3-70, *et seq.* At completion, the Condominium is expected to contain ten (10) Condominium Units and will be subject to the Condominium Declaration and governed by the Condominium Association.

1.9 "Condominium Association" means Roswell Norcross Street Condominium Association, Inc., a Georgia nonprofit corporation, its successors and assigns. The Condominium Association shall have concurrent jurisdiction with the Association over the Condominium and the Condominium Units located therein.

1.10 "Condominium Declaration" shall refer to that certain Declaration of Condominium for Roswell Court Condominium, recorded or to be recorded in the Fulton County, Georgia land records which subjects the property described on Exhibit "A" thereto to the provisions thereof, which property is a portion of the property described on Exhibit "A." The covenants, restrictions, and easements set forth in the Condominium Declaration shall be in addition to those contained in this Declaration. The Condominium Declaration shall not be recorded without the prior review and written approval of Declarant, which approval shall not be unreasonably withheld.

1.11 "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 the Condominium Declaration, a unit as defined in said Condominium Declaration. The term Condominium Unit shall include both a Residential Condominium Unit and Commercial Condominium Unit. 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 and to the Common Property, as herein provided.

1.12 "Declarant" means **JWNSP ROSWELL, 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.

1.13 "Development" or "Roswell Court" 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.

1.14 "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 or articulated in the Architectural Guidelines established pursuant to Section 6.4 hereof, but must be consistent with the Development-Wide Standard originally established by the Declarant.

1.15 "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.

1.16 "Mortgagee" means the holder of a Mortgage.

1.17 "Retail Unit" means that certain two-story building located in the Development which is attached by a party wall to a Townhome Unit and used for retail and/or office use, as may be more particularly shown on the recorded subdivision plat for the Development

1.18 "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.

1.19 "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 a Mortgagee.

1.20 "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.

1.21 "Residential Condominium Unit" means a Condominium Unit which is used for residential purposes, as more particularly described herein.

1.22 "Residential Unit" means collectively the Townhome Units and Residential Condominium Units.

1.23 "Supplementary Declaration" means a 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.

1.24 "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.

1.25 "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 which will be attached by one or more party walls to another Townhome Unit. It is anticipated that at the completion of the Development there will be seven (7) Townhome Units. Where a Townhome Unit is attached by a party wall to one or more other Townhome Units, the boundary between Townhome Units shall be a line running along the center of the party wall separating such 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 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 and to the Common Property, as herein provided.

1.26 "Unit" means a Condominium Unit, Townhome Unit or Retail Unit as defined herein and as shown on a plat recorded in the Office of the Clerk of Superior Court of Fulton County, Georgia, but specifically excludes any portion of the Common Property or public right-of-way. 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 and to 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 portion of the real property described in Exhibit "B" attached hereto and by this reference incorporated herein, to subject all or any portion thereof 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 Fulton County, Georgia a Supplementary Declaration describing the property being subjected. Any annexation shall be effective upon the filing for record of a Supplementary Declaration, unless a later effective date is provided therein.

2.3 Annexation by Association. 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 Fulton County, Georgia a Supplementary Declaration describing the property being annexed. 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.

2.4 Withdrawal of Property. Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant Section 2.2 hereof to remove any portion of the Development then owned by Declarant or the Association from the coverage of this Declaration 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 withdrawal shall be accomplished by filing an amendment to this Declaration describing the property to be removed and such amendment shall be effective upon filing for record in the Office of the Clerk of Superior Court of Fulton County, Georgia unless a later effective date is provided therein. Such amendment shall be executed by the Declarant and the Owner(s) of the property being removed and shall not require the vote or consent of any other Owners.

### 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. In any matter coming before the members for a vote, members shall be entitled to cast one (1) vote for each Unit owned. 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, rules and regulations or Architectural Guidelines established pursuant to Section 6.4 hereof.

3.3 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.

(a) General. Each Owner of a Unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (i) general assessments; (ii) special assessments; and (iii) specific assessments. 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.

(b) Creation of the Lien. 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.

(c) Exemption from Assessments. 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: (i) abandonment of the Unit; (ii) nonuse of the Common Property; (iii) the Association's failure to perform its obligations required under the Declaration; or (d) 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 Adoption of 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. The Board shall cause the 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 the general assessment. The 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 and Declarant disapprove 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 has 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.

4.4 General Assessments. General assessments shall be levied equally on all Units and 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. 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 street lights, exterior lighting in paved areas of the Development and other utilities and 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 bio retention areas and storm water drainage facilities serving the Development; (h) costs incurred to maintain the exterior building surfaces in the Development as provided in Section 5.3 hereof; (i) costs to maintain the private streets and sidewalks in the Development; (j) landscape maintenance; and (k) 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.

4.5 Special Assessments. The Association, acting through the Board of Directors may levy a special assessment against all Owners for unbudgeted or unanticipated expenses or expenses in excess of those budgeted if approved by two-thirds (2/3) of the Total Association Vote and the Declarant; provided, however, so long as the total amount of special assessments allocated to each Unit in a single fiscal year does not exceed the amount of the annual general assessment in 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.

4.6 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 capital contribution as provided in Section 4.14; (c) the cost of maintenance performed by the Association for which an Owner is responsible; and (d) maintenance, repairs and other costs incurred to operate and dispose of trash deposited in the dumpster, with the Retail Unit Owner responsible for one-third (1/3) of such costs and the Commercial Condominium Unit Owners collectively responsible for two-thirds (2/3) of the cost. 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 by an Owner or the Occupants, tenants, guests or invitees of an Owner may be specifically assessed against the Unit of such Owner.

4.7 Payment of Condominium Unit Owner Assessments by Condominium Association.

If directed in writing by the Board of Directors, the Condominium Association shall collect the general assessment and any special assessment due from Owners of the Condominium Units in the Condominium and pay all such assessments collected to the Association prior to the due date thereof. In such case, the Condominium Association shall include the general assessment of the Association applicable to all Condominium Units as a separate line item in its annual budget and shall pay all 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 Condominium Association hereunder shall be borne by the Condominium Association to the extent not collected from the defaulting Unit Owner.

4.8 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.

4.9 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 claim of lien with the Office of the Clerk of Superior Court of Fulton 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 the membership rights of the delinquent Owner, including the right to vote, the right of enjoyment in and to the Common Property and the right to receive and enjoy such services and other benefits as may then be provided by the Association, if any. Any suspension shall not affect an Owner'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.

4.10 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: (a) the Unit has been issued a certificate of occupancy by the applicable governmental authority and is first occupied for residential or commercial purposes; or (b) is conveyed by Declarant or Approved Builder to an Owner who is not an Approved Builder, successor Declarant or an affiliate of Declarant. Any Unit which has been approved by Declarant for use as a model 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 and is not occupied for residential or commercial purposes.

4.11 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: (a) advance funds or contributions of services or materials or a combination of services and materials, 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, 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); or (b) cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for similar loans in the local area of

the Development; provided, however, no Mortgage secured by the Common Property shall be given in connection with such loan.

4.12 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 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.

4.13 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.

4.14 Capital Contribution Fee. Upon each and every the sale of a Unit to an Owner who is not a builder, Approved Builder, successor Declarant or an affiliate of Declarant, a capital contribution 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 capital contribution 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 capital contribution 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. Notwithstanding the foregoing, the capital contribution fee 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 title to the Unit from the foreclosing Mortgagee.

## 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 bio retention areas, as generally shown on the recorded subdivision plat(s), and storm water drainage facilities serving the Development, in accordance with that certain City of Roswell Stormwater Management Facilities and Practices Covenant, recorded April 1, 2016 at Deed Book 56064, Page 87, *et seq.*, Fulton County, Georgia land records as provided in Section 5.12 hereof; provided, however, except as otherwise set forth in Section 5.3 hereof, the Association shall not be responsible for the maintenance, repair and replacement of any storm water drainage facilities which exclusively serve the Townhome Units, Retail Unit or the Condominium; (b) any entry features or Development identification signage, regardless of whether such entry features or signage are located on a Unit, Common Property or public right-of-way; (c) the mailbox kiosk and the mailboxes located therein; (d) all open space and green space shown on the recorded subdivision plat(s); (e) the private street, sidewalks, street signs, paved areas and any medians and islands located within such private street and paved areas; (f) the exterior surfaces of the Condominium, Townhome Units and the Retail Unit, as provided in Section 5.3 hereof; (g) landscaping in the Development as provided in Section 5.4 hereof; and (h) any retaining walls located in the Development. 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. The Association shall have the right, but not the obligation, to maintain property it does not own, 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.

**5.2 Owner's Responsibility.** Except for maintenance performed on or to the Condominium, a Townhome Unit or Retail Unit by the Association pursuant to Section 5.3 hereof or maintenance performed to a Condominium Unit by the Condominium Association pursuant to the Condominium Declaration, if any, all maintenance of a 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) keeping improvements, and exterior lighting in good repair and working order; (iii) keeping driveways, walkways and other structural improvements in good repair; (iv) complying with all governmental health and police requirements; and (v) those exterior portions of a Unit as set forth in Section 5.3(b) hereof.

### 5.3 Exterior Maintenance to Units.

(a) By the Association. As provided in Section 5.1 of the Declaration, the Association shall be responsible for maintaining certain portions of the Condominium, Townhome Units and the Retail Unit as more specifically set forth herein. 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 or any combination of a Townhome Unit, Retail Unit or the Condominium, regardless of whether the same are located within or outside of the boundaries of such 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 for the Residential Units (but the Owner shall be responsible for the operation of the garage doors and all related components and equipment); provided, however, the Association shall only be responsible for maintenance to garage doors if such garage doors are wooden; (iii) all roofs, downspouts and gutters, including, roof decking and shingles comprising the Condominium, the Townhome Units and the Retail Units on a schedule determined by the Board of Directors in its sole discretion; (iv) all exterior building surfaces in the Development, including periodic painting and/or pressure washing, as applicable; provided, however, the Association shall not be responsible for waterproofing foundations either above or below grade or maintenance and repair to hardware or glass; (v) the painting of shutters attached to any Townhome Unit; and (vi) the painting and/or staining of any porch, deck or balcony attached to a Townhome Unit. Upon resolution of the Board and approval by: (a) Owners representing at least a Majority of the Townhome Units; (b) Owners representing at least a Majority of the Condominium Units; (c) the Retail Unit Owner; and (d) the Declarant, the Association may assume responsibility for providing additional exterior maintenance to the Development so long as the Condominium, the Townhome Units and the Retail Unit, as applicable, are maintained according to the same standard, with the expenses thereof to be included as part of the general assessment or a special assessment, as the case may be. 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.

(b) By the Owners. Unless such maintenance is assumed by the Association or the Condominium Association as provided in subsection (a) above, each Owner shall be responsible for, regardless of the location thereof, the maintenance, repair, and replacement of the following: (i) the structural components of the Townhome Units, Retail Unit or Condominium Unit, respectively, which for a Townhome Unit and Retail Unit shall include foundations and footings; (ii) any walkway, driveway, steps, or stoops exclusively serving a 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 for the Residential Units which shall be maintained by the Association) and door frames; (iv) any heating and air conditioning unit or similar equipment, and pipes, wires, or conduits, serving only a single Unit; (v) any personal property, appliances, equipment or fixtures contained within a Unit; (vi) pipes which exclusively serve one (1) Unit, regardless of whether the same are located within or without the boundaries of such Unit; and (vii) lighting fixtures pertaining to or exclusively serving a particular Unit. Notwithstanding the foregoing, each Owner of a Unit shall be obligated to: (i) perform his or her maintenance responsibility in such manner so as not to unreasonably disturb other Persons in or

on other Units; (ii) promptly report to the Association or its agent any defect or need for repairs for which the Association is responsible; and (iii) not make any alterations or additions to or on any portion of the Condominium, a Townhome Unit or Retail Unit which is to be maintained by the Association, remove any portion thereof, or do anything with respect to the exterior or interior of the Condominium, Townhome Unit or Retail Unit which would or might increase the Association's maintenance costs or jeopardize or impair the safety or soundness of the Condominium, Townhome Unit or Retail Unit without first obtaining the written consent of the Board and all affected Owners. Each Owner shall also not impair any easement without first obtaining written consent of the Association and of the Owner or Owners for whose benefit such easement exists.

5.4 Landscape Maintenance. As provided in Section 5.1 above, the Association shall maintain and keep in good repair the landscaping improvements located on the exterior portions of the Development, including the green space and open space areas. The Board of Directors in its sole discretion may: (a) leave portions of the Development as undisturbed natural areas; (b) change the landscaping in the Development at any time and from time to time; and (c) promulgate rules setting forth the extent of landscaping maintenance to be performed by the Association. Owners shall not add, remove or modify trees, shrubs, bushes, plants or other vegetation in the Development without prior written approval pursuant to Article 6 hereof or in accordance with applicable Architectural Guidelines (as defined below), if any; provided, however, the Board may adopt rules and regulations regarding the rights of Owners with respect to adding or modifying landscaping improvements, including, for example allowing seasonal flowering plants in certain areas of the Development at the expense of the Owner. Landscaping improvements installed by an Owner and approved pursuant to Article 6 hereof shall be maintained by the Owner in a manner consistent with the Development-Wide Standard. Any landscaping improvements originally installed by an Owner which are not properly maintained, including, but not limited to, damaged, diseased or dead plants, shrubs and trees may, at the sole discretion of the Board of Directors, be removed from the Development and all costs associated therewith may be assessed against the Unit as a specific assessment. Any common irrigation system installed by the Declarant, Approved Builder or the Association shall be Common Property, operated, maintained, repaired and replaced by the Association.

5.5 Failure of Owner 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 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 to be performed. 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 an Owner does not comply with the provisions hereof, the Association may provide such maintenance, repair or replacement to the Unit and all costs thereof shall be assessed against the Unit as a specific assessment. This provision shall not apply to Units owned by Declarant or Approved Builder unless improved with a dwelling and occupied as a residence.

5.6 Party Walls. Each wall built as a part of the original construction of the Townhome Units and Retail Unit which shall serve and separate any two (2) adjoining Townhome Units or a Townhome Unit and Retail Unit shall constitute a party wall 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 shall be shared by the Owners who make use of the wall in equal proportions. If a party wall is destroyed or damaged by fire or other casualty, then any Owner who has benefited by the wall may restore it, and the other Owner who is benefited by the wall 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.

5.7 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 has the unilateral right to annex additional property to the Declaration, Declarant may, upon written notice to the Association, require the Association to re-convey to Declarant, Approved Builder or any affiliate thereof, as the case may be, all or any portion of the Common Property, improved or unimproved, at no charge to Declarant, without a vote of the members of the Association, if all or a portion of the Common Property is: (a) found by Declarant to have been conveyed in error; (b) needed by Declarant to make adjustments in property boundary lines; or (c) reasonably determined by Declarant to be needed by Declarant due to changes in the overall scheme 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 Fulton County, Georgia.

5.8 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: (a) all Owners of all portions of the property located within the Development; and (b) all holders of all Mortgages encumbering any portion of the property, including, but not limited to, the Units located within the Development.

5.9 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 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 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.

5.10 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, Declarant, Approved Builder, and their respective officers, directors, employees, representatives and agents shall not be held liable for: (a) personal injury to any person occurring on the Common Property; (b) loss or damage to personal property used or stored on the Common Property or on any other portion of the Development; or (c) loss or damage by theft or otherwise of any property of an Owner or Occupant. In addition to the foregoing, 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.

5.11 Measures Related to Insurance Coverage. The Board of Directors shall have the authority to require all or any Unit Owner(s) to do any act or perform any work involving portions of the Development that are the maintenance responsibility of the 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 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 Unit Owner does not comply with any reasonable requirement made by the Board as provided herein, the Association, upon fifteen (15) days' written notice (during which period the Unit Owner may perform the required act or work without further liability), may perform such required act or work at the 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 this Section, including, but not limited to, a right of entry during reasonable hours and after reasonable notice to the Owner or Occupant of the Unit, except that access may be had at any time without notice in an emergency situation.

5.12 Stormwater Management Facilities. The Community is served by a Stormwater Management Facility located on the Common Property (the "Facility") as provided in that certain Stormwater Management Facilities and Practices Covenant, between Declarant and City of Roswell, Georgia, dated April 1, 2016 recorded in the Office of the Clerk of Superior Court, Fulton County, at Deed Book 56064, Page 87, *et seq.* (the "Maintenance Agreement"). Any reference to Landowner in the Maintenance Agreement shall mean a reference to the Association. The Association shall be responsible for the routine inspection and maintenance of the Facility in a manner to ensure the proper function of the Facility. Inspections shall be conducted at least semiannually, or more frequently as required under the Maintenance Agreement. The Association shall be responsible for the operation and maintenance of the Facility unless and until the Facility is dedicated to, and officially accepted by, a governmental agency. Upon request, the Association shall provide records of all maintenance and repairs to the City. The Association shall operate the Facility in a structurally sound condition so that it satisfies the drainage functions for which it was intended, maintain the Facility in a clean and safe condition so as not to constitute a hazard or nuisance to the public, and maintain the Facility in accordance with all rules, standards and regulations applicable thereto imposed by federal, state and local governmental authorities, including the City of Roswell and Fulton County. The Declarant or Association shall have the right to modify the Facility and the operation thereof from time to time in order to comply with applicable laws and regulations.

## Article 6 Architectural Standards

6.1 General. Except as otherwise provided herein, 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 Townhome Unit or Retail Unit without approval hereunder; provided, however, no Owner shall do anything with respect to the interior of such Townhome Unit or Retail Unit which would or might increase the Association's maintenance costs or jeopardize or impair the safety or soundness of such Residential. However, additions and/or modifications to the interior of porches, patios, decks, balconies and similar portions of a structure visible from outside of a Townhome Unit or the Retail Unit shall be subject to approval. No approval shall be required to rebuild in accordance with originally approved plans and specifications.

(a) Approved Builders. 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.

(b) Rights Reserved for Declarant. 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 Exemption for Condominium Units. Notwithstanding anything to the contrary herein, the provisions of this Article 6 shall not apply to any construction, modification, alteration or addition to a Condominium Unit located in the Condominium which is not visible from the exterior of the Condominium. Such construction, modification, alteration or addition shall be approved in accordance with the provisions of the Condominium Declaration.

6.3 Guidelines and Procedures. Except as provided above or as specifically articulated in the Architectural Guidelines established pursuant to Section 6.4 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 forty-five (45) 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 or commercial dwelling located on a Unit without the consent of the Owner thereof.

6.4 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.

6.5 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 other 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.

6.6 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.

6.7 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.

6.8 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.

6.9 Architectural Review by Declarant. Until: (a) the Declarant no longer owns any property in the Community and no longer has the right to unilaterally annex additional property to the Community; and (b) each Unit has been issued a certificate of occupancy by the appropriate governmental agency, the Declarant shall have the sole right, power and authority under this Article. Notwithstanding the foregoing, the Declarant may in its sole discretion relinquish architectural control as to certain types of improvements or modifications to an architectural review committee ("Architectural Review Committee") while retaining control over all other building and construction in the Community; provided, however, any right, power or

authority of the Declarant which may be relinquished to the Architectural Review Committee prior to the termination of the rights of Declarant hereunder shall only be in a written instrument in recordable form executed by Declarant and recorded with the Clerk of the Superior Court of DeKalb County, Georgia. For example and without limitation, the Declarant may relinquish control over modifications of existing structures to the Architectural Review Committee while retaining all authority to review and approve new home construction. The establishment of an advisory Architectural Review Committee shall not be deemed to be a relinquishment by Declarant of any of its right, power and authority hereunder. Upon expiration or earlier surrender in writing of all or a portion of such right and authority by the Declarant, the Board of Directors shall appoint an Architectural Review Committee, which shall then have such jurisdiction over architectural control under this Article as may have been relinquished by the Declarant. After the termination of all rights of Declarant hereunder, the Architectural Review Committee shall have all right, power and authority to review and approve building and construction activity within the Community hereunder 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 Architectural Review Committee. Notwithstanding anything to the contrary herein, the members of the Architectural Review Committee shall be appointed by and serve at the discretion of the Board of Directors.

## Article 7

### Use Restrictions and Rules

7.1 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 for Residential Units. 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 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 or in accordance with applicable Architectural Guidelines; provided, however, the following signs may be erected on any Unit without approval: (a) signs required by legal proceedings; and (b) such other signs as may be permitted under the Architectural Guidelines. Unless otherwise provided by the Board, "for-lease" signs shall be prohibited on a Residential Unit. The Retail Unit and Commercial Condominium Units may display for-rent signs from within the Retail Unit or Commercial Condominium Unit so long as they are approved pursuant to Article 6 hereof. 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 signs relating to the development, construction, marketing or sales of 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.

(a) General. Vehicles shall be parked only in appropriate parking areas. 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.

(b) Parking for Residential Units. Each Residential Unit shall contain a garage. Vehicles shall be parked in the garage. Garages shall be primarily used for parking of vehicles and not for storage or other purposes. Garage doors should be kept closed at all times, except during times of ingress and egress from the garage.

(c) Parking for Commercial Condominium Units and Retail Unit. Commercial Condominium Units and the Retail Unit are initially assigned the parking space(s) shown on Exhibit "C" attached hereto and by this reference incorporated herein. Notwithstanding anything

to the contrary herein, so long as Declarant owns a Commercial Condominium Unit or the Retail Unit, Declarant shall have the right to reassign parking spaces without the consent of any Person, other than the Owner of any Commercial Condominium Unit or Retail Unit whose parking space is being reassigned. After the Declarant no longer has the right to reassign parking spaces, the Board may reassign parking spaces with the consent of the affected Owners.

(d) Guest Parking Spaces. Certain parking spaces designated on Exhibit "C" as guest parking spaces ("Guest Parking Spaces") shall be for temporary parking by guests, invitees and licensees of the Owners and Occupants of the Commercial Condominium Units and Retail Unit on a first come, first served basis. Owners, Occupants and guests of such Owners and Occupants of Residential Units shall not be entitled to park vehicles on or otherwise utilize the Guest Parking Spaces, except with the prior written approval of the Board of Directors for use on a temporary basis or during such times as the Retail Unit and Commercial Condominium Units are closed for business. All parking in Guest Parking Spaces shall be subject to the provisions of this Section and such additional rules and regulations as the Board of Directors may adopt from time to time, including without limitation, restrictions regarding overnight parking or visitor parking in the surface parking lot serving the Development.

(e) Removal of Vehicles. Any vehicle regularly stored in the Development or temporarily kept in the Development, except if kept in an enclosed garage or other area designated by the Board, for periods longer than twenty-four (24) hours may be removed from the Development by the Board of Directors.

(f) Remedies of the Association for Noncompliance. If any vehicle is parked on any portion of 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 cause the vehicle to be towed or booted, subject to compliance with applicable law, including any notice required thereby. The notice may be a general notice by signage or may be placed on the vehicle, if and as allowed under applicable law, as the case may be. 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, the Board or agent of the Association may have the vehicle towed immediately, subject to compliance with applicable law. If a vehicle is towed or booted in accordance with this subparagraph and applicable law, 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 or booting 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 or boot.

(g) Traffic Regulations. All vehicular traffic on the parking lot and private drives in the Development shall be subject to the provisions of state and local laws concerning the operation of motor vehicles on public streets. The Association is hereby authorized to promulgate, administer, and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including 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 parking lots, 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.

(h) Declarant and Approved Builder Exemption. 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 and Pets. Except as authorized by the Board of Directors, no animals of any kind may be raised, bred, kept or permitted in the Development, 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 aviaries, beehives, dog runs, runners or exterior pens for household animals shall be erected or maintained in the Development 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, the foregoing restriction shall not apply to service animals. 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. 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, including, without limitation, reasonable attorneys' fees actually incurred, shall be a specific assessment against the Unit of such Owner. 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.

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 and/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 structure 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 Garbage Cans, Woodpiles, Etc. Unless otherwise approved under Article 6 hereof, all garbage cans, recycling bins and other similar items shall be placed in the garage serving a Residential Unit or located or screened in a manner approved by the Board of Directors so as to be concealed from the view of neighboring streets and property. All rubbish, trash, and garbage shall be regularly removed from the Units and shall not be allowed to accumulate therein. All rubbish, trash and garbage generated by the Owners or Occupants of the Retail Unit and

Commercial Condominium Units shall be regularly removed and placed in the dumpster serving the Development and shall not be allowed to accumulate with the costs thereof being a specific assessment as provided in Section 4.6 hereof. Owners and Occupants of the Residential Units shall not use the dumpster.

7.10 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 Common Property or property that was formerly a Unit or Common Property, without the consent of any Person, other than the Owner(s) of such property. Notwithstanding the foregoing, this Section shall not apply to the subdivision of a Condominium Unit. A Condominium Unit may be subdivided in accordance with applicable provisions of the Condominium Declaration.

7.11 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.

7.12 Utility Lines. No overhead utility lines, including, without limitation, lines for cable television, shall be installed within the Development.

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

7.14 Lighting. Exterior lighting on any Unit 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, subject to such reasonable rules and regulations as may be adopted by the Board from time to time in its sole discretion; (e) front house illumination of model homes; or (f) other lighting approved under Article 6 hereof or in compliance with applicable Architectural Guidelines.

7.15 Artificial Vegetation, Exterior Sculpture and Similar Items. No artificial vegetation shall be permitted on the exterior of any Unit or on the exterior of the Condominium.

7.16 Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless it has been approved under Article 6 hereof as to number, style and location or otherwise permitted under the Architectural Guidelines.

7.17 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 in the Development, without prior written approval in accordance with the Article 6 hereof and/or in compliance with applicable Architectural Guidelines.

7.18 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 Unit must be stained wooden blinds, bamboo shutters, or white or off-white in color or such other acceptable color(s) and/or materials as may be permitted in the Architectural Guidelines.

7.19 Abandoned Personal Property. Personal property, other than vehicles as provided for in Section 7.4 hereof, is prohibited from being stored, kept, or allowed to remain unattended upon any portion of the Common Property, without prior written Board permission. If the Board determines that a violation exists, then, not less than twenty-four (24) hours after written notice is placed on the personal property and/or on the front door of the property owner's Unit, if known, the Board may remove the personal property and it shall have no obligation to return or replace such property or reimburse the owner of the property. The notice shall include the name and telephone number of the Person which will remove the property and the name and telephone number of an individual to contact regarding the alleged violation. The Board, in its discretion, may determine that an emergency situation exists and may exercise its removal rights hereunder without prior notice to the property owner; provided, however, in such case, the Board shall give the property owner, if known, notice of the removal of the property and the location of the property within three (3) days after the property is removed. The Association and any director, officer, employee or agent thereof shall not be liable to any Person for any claim of damage resulting from the removal of any personal property in accordance with the procedures set forth herein. Notwithstanding the foregoing, the Board may elect to impose fines or use other available remedies, rather than exercise its authority to remove property hereunder.

7.20 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 the 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.

7.21 Heating of Units in Colder Months. In order to prevent water pipes from breaking during colder months of the year resulting in damage to Units, increased common expenses, and increased insurance premiums or cancellation of insurance policies due to numerous damage claims, the thermostats within all Units shall be maintained with heating operating and at a minimum of fifty degrees (50°) Fahrenheit when the temperature does or is forecasted to go below thirty-two degrees (32°) Fahrenheit. 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 Units of such equipment failure and of the time needed in order to repair the equipment and shall take reasonable steps to keep the Unit heated sufficiently to prevent the breakage of water pipes.

7.22 Decks, Patios, Porches, Balconies and Courtyards. No laundry, garments, towels or objects other than potted plants, grills, umbrellas and patio furniture, shall be placed on a deck, patio, porch, courtyard area or balcony, except as may be authorized by the Board of Directors or permitted in the Architectural Guidelines. The use of grills and other like equipment, including, without limitation, smokers, shall only be permitted in accordance with applicable municipal, county and state ordinances and laws and fire codes, as well as the requirements of the Association's insurance policies. No outdoor grills are permitted indoors or inside any garage area. Grills shall be covered with grill covers when not in use. Grill and outdoor furniture covers shall be removable and of a type and color consistent with the Development-Wide Standard. Objects shall not be permitted to hang over or be attached to any deck, patio, porch, courtyard area or balcony or to otherwise protrude outside of the vertical plane formed by the exterior surface of any deck, patio, porch, courtyard area or balcony located on or appurtenant to a Unit. No deck, patio, balcony, courtyard area or porch shall be enclosed without prior approval in accordance with Article 6 of this Declaration.

7.23 Exterior Drapery. No exterior drapery shall be permitted unless approved in accordance with Article 6 hereof.

7.24 Exterior Colors. As provided in Article 5 hereof, exterior maintenance of Units, including, without limitation, painting, is the responsibility of the Association. Accordingly, Owners shall not paint or otherwise alter the exterior of any Unit or improvements constructed or maintained thereon without the prior written consent of the Board or its designee. The exterior of all improvements, including, without limitation, dwellings, constructed, erected, allowed or maintained upon any Unit must be painted or repainted in a color as approved by the Board or its designee. Notwithstanding the foregoing, any Owner who performs maintenance on or to a Unit which is the responsibility of the Association pursuant to this Declaration shall not be entitled to any reduction in the payment of any annual, special, specific assessment.

7.25 Impairment of Units and Easements. An Owner shall take no action that will impair the structural soundness or integrity of any Unit or impair any easement or other interest in real

property, nor allow any condition to exist which will materially adversely affect the other Units or their Owners or Occupants.

**7.26 Leasing of Residential Units.** In order to protect the equity of the Residential Unit Owners, to preserve the character of the Residential Units as predominantly owner occupied and by preventing the Development from assuming the character of a residential rental project, to comply with the eligibility requirements for financing in the secondary mortgage market insofar as such criteria provide that the Residential Units be substantially owner occupied, leasing of Units shall be governed by the restrictions imposed by this Section. No Owner may lease a Residential Unit unless the Owner has received a hardship leasing permit, in writing, from the Board of Directors as set forth below. A hardship leasing permit will allow an Owner to lease the Residential Unit in accordance with the terms and conditions set forth in this Section and in accordance with the rules and regulations of the Association and the covenants and conditions set forth in this Declaration. Notwithstanding anything to the contrary herein, hardship leasing permits shall only be valid as to a specific Owner and Unit and shall not be transferrable between Units or to subsequent Owners. Leasing as such term is used herein means the regular, exclusive occupancy of a Residential Unit by any Person(s) other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, rent, gratuity or emolument. For purposes hereof the following shall not constitute leasing: (a) occupancy of a Residential Unit by members of the Owner's family; (b) occupancy of a Residential Unit by a roommate of an Owner-Occupant; (c) occupancy of a Residential Unit by one or more wards if the Residential Unit is owned by their legal guardian; or (d) occupancy of a Residential Unit by one or more beneficiaries of a trust if the Residential Unit is owned in trust by the trustee.

(a) **Hardship Leasing Permits.** If an Owner must lease a Residential Unit to avoid an undue hardship, the Owner shall apply to the Board in writing for a hardship leasing permit. The Board may issue or deny requests for hardship leasing permits in its discretion after considering the following factors, which include, but are not limited to: (a) the nature, degree and likely duration of the hardship; (b) the harm, if any, which will result to the Development if the hardship leasing permit is approved; (c) the number of hardship leasing permits which have been issued to other Owners; (d) the Owner's role in causing the hardship or ability to cure the hardship; and (e) whether previous hardship leasing permits have been issued to the Owner. A hardship hereunder shall include, but not be limited to, the following situations: (a) an Owner dies and the Residential Unit is being administered by his or her estate; (b) an Owner must relocate outside metropolitan Atlanta and cannot, within six months from the date that the Residential Unit was placed on the market, sell the Residential Unit except at a price below the current balance of a first priority Mortgage on the Residential Unit, after making reasonable efforts to do so; or (c) an Owner takes a leave of absence or temporarily relocates out of the metropolitan Atlanta area and intends to return to reside in the Residential Unit within one year. Hardship leasing permits shall be valid for a term not to exceed one (1) year. Owners may reapply for additional hardship leasing permits prior to the expiration of a hardship leasing permit in accordance with the procedures set forth herein.

(b) **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 the 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 other Occupant 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 Residential Unit.

(c) Notice. Within ten (10) days after executing a lease agreement for the lease of a Residential 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 Residential Unit; and (v) such other information as the Board may reasonably require.

(d) 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.

(e) Liability for Assessments; Assignment of Rent. If an Owner who is leasing a Residential 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.

(f) Exemption. This Section shall not apply to any leasing transaction entered into by the holder of a first Mortgage on a Residential 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.

7.27 Retail Unit and Commercial Condominium Units; Restricted and Prohibited Uses.

(a) General Prohibited Uses. The Retail Unit and any Commercial Condominium Unit shall not 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 Retail Unit or any portion thereof or the Commercial Condominium Unit; or (iii) for any other use not compatible with the operation of the Development in compliance with the Development-Wide Standard. Without limiting the generality of the provisions set forth above, the following uses shall not be permitted within the Retail Unit or any Commercial Condominium 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 the Retail Unit or Commercial Condominium Unit;

(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);

(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;

(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;

(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 flea market, pawn shop, swap shop or "outlet store" selling merchandise that is damaged or discontinued;

(xv) Any arcade, game room or billiard room;

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

(xvii) Any dance studio.

(xviii) Any restaurant or business whose primary purpose is to serve food to patrons, including, without limitation, sandwich shops, delis and other establishments where food is prepared, but consumed outside of the premises.

(b) General Permitted Uses. The Commercial Condominium Unit and Retail Unit shall be used for office and professional use only. Any other use thereof shall require the prior written consent of the Board. The term "office and professional use" as used herein shall mean commercial office use and service retail uses which are intended to be open to and serve the public such as, but not limited to, medical offices, including, without limitation, optometry, dental and orthodontic offices, law or accounting offices, banks and/or automated teller machines, real estate sales or rental offices and travel agencies. The Retail Unit may be used and operated for any office use. The Commercial Condominium Units shall not be used primarily for retail sales purposes such as the on-site display and sale of merchandise to the public.

7.28 Transient or Hotel Purposes. No Residential Unit shall be used for transient occupancy or hotel purposes, including, without limitation, listing such Residential Unit on any internet or social media site or other listing agency for short term occupancy or rental.

## Article 8 Insurance and Casualty Losses

### 8.1 Insurance Obtained by Association.

(a) General. The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for: (i) all insurable improvements located on the

Common Property or required to be maintained by the Association under Section 5.1; (ii) blanket insurance for all Townhome Units and the Retail Unit; and (iii) insurance covering the Condominium which complies with and satisfies all requirements set forth in the Georgia Condominium Act, O.C.G.A. 44-3-70, *et seq.*, as amended ("Condominium Act"). The insurance coverage under (i), (ii) and (iii) may be obtained in a single master policy. Insurance obtained and maintained by the Association shall cover loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

Nothing in this Section shall be construed as obligating the Association to obtain or maintain insurance covering a Unit Owner's or Occupant's personal property and unless otherwise provided by the Board, insurance obtained by the Association shall exclude improvements and betterments made by an Owner.

The Board shall obtain a public liability policy insuring the Association and its members for all damage to third party property or injury to persons caused by the negligence of the Association or any of its members or agents. The public liability policy shall have a combined single limit of at least One Million and No/100 Dollars (\$1,000,000.00). If available at reasonable cost, as determined by the Board in its sole discretion, the Board shall also obtain directors' and officers' liability insurance.

At least every two (2) years the Board shall conduct an insurance review to verify that the policies in force are adequate to meet the Association's needs and satisfy the requirements of the Condominium Act. Such responsibility may be performed, and shall be deemed reasonably performed, by the Board upon verification by the Association's insurance agent. Notwithstanding the foregoing, the incremental premium increase, if any, for such insurance coverage or any increase in the basic required coverage due to the uses and activities in a particular Unit shall be specifically assessed to the Unit that is benefited by the insurance coverage or is the cause of the increase in the insurance premium as authorized under this Declaration.

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

Premiums for all insurance shall be a common expense of the Association.

(b) Insurance Requirements. All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee, for the respective parties which may be benefited by such insurance, as their interests may appear. Such insurance shall be governed by the provisions hereinafter set forth:

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

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

(iii) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.

(iv) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement, if reasonably available, and all insurance policies shall be reviewed annually by one or more qualified Persons, at least one of whom must be in the real estate industry and familiar with construction in the county where the Development is located.

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

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

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

(C) that no policy may be canceled, subjected to nonrenewal, invalidated or suspended on account of any one or more individual Owners;

(D) that no policy may be canceled, subjected to nonrenewal, invalidated or suspended on account of any defect or the conduct of any director, officer or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee;

(E) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

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

(c) Other Insurance. In addition to the insurance required above, the Board or the Association, as the case may be, shall obtain as a common expense:

(i) worker's compensation insurance if and to the extent necessary to meet the requirements of law;

(ii) public liability insurance in amounts no less than required by Section 44-3-107 of the Condominium Act, as amended, and officers' and directors' liability insurance in such amounts as the Board may determine; the public liability insurance shall contain a cross liability endorsement;

(iii) fidelity bonds, if reasonably available, covering officers, directors, employees, and other persons who handle or are responsible for handling Association funds. Such bonds, if reasonably available, shall be in an amount which in the best business judgment of the Board of Directors reflects the estimated maximum amount of funds, including reserve funds, that will be in the custody of the Association or its management agent at any time while the policy is in force, or any lesser amount of fidelity coverage allowable under the applicable Fannie Mae guidelines and shall contain waivers of any defense based upon the exclusion of persons serving without compensation; provided, however, fidelity coverage may be less than the foregoing based on the implementation of financial controls which take one or more of the following forms: (A) the Association or management company, if any, maintains a separate bank account for the working account and the reserve account, each with appropriate access controls, and the bank in which funds are deposited sends copies of the monthly bank statements directly to the Association; (B) the management company, if any, maintains separate records and bank accounts for each association that uses such company's services and the management company does not have the authority to draw checks on, or to transfer funds from, the Association's reserve account; or (C) two (2) members of the Board must sign any checks written on the reserve account; and

(iv) such other insurance as the Board may determine to be necessary.

8.2 Insurance Obtained by Unit Owners. 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 obtain and maintain insurance covering an Owner's and Occupant's personal property and each Owner covenants and agrees with all other Owners to obtain and maintain the following: (i) a liability policy covering damage or injury occurring on a Unit; (ii) insurance covering an Owner's or Occupant's personal property; and (iii) insurance covering any upgrades, betterments and improvements made to such Unit. The policies required hereunder shall be in effect at all times.



### 8.3 Damage and Destruction.

(a) In General. Immediately after the damage or destruction by fire or other casualty to all or any portion of any structure or improvement covered by insurance written in the name of the Association, the Board of Directors shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessary to comply with applicable building codes.

(b) Repair and Construction. Any damage or destruction to property required to be covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least seventy-five percent (75%) of the Total Association Vote and the Declarant otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Association's members, levy a special assessment against the Owners of all of the Units subject to assessment. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess funds shall be deposited to the benefit of the Association.

8.4 Insurance Deductible. The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the Persons who would be responsible for such loss in the absence of insurance. The Owner(s) shall be responsible for the full amount of the deductible under the Association's policy to the extent the same is not covered under such Owner's individual insurance policy. If the loss affects more than one Unit or a 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 provides that the deductible will apply to each Unit separately. If an Owner fails to pay the deductible when required hereunder, the Association can pay the deductible and assess the cost to such Owner as a specific assessment. Notwithstanding anything to the contrary herein, the amount of the deductible which may be allocated to an Owner of a Condominium Unit shall not exceed Five Thousand and No/100 Dollars (\$5,000.00) or such higher amount as may be authorized by the Condominium Act, per casualty loss covered under any insurance required to be maintained by the Association pursuant to the Condominium Act.

8.5 Payment of Claims to Delinquent Owners. Notwithstanding anything to the contrary herein, in the event of an insured loss under the Association's master hazard insurance policy for which the Association receives from the insurer payment for a loss sustained by an Owner who is delinquent in any payment owed to the Association, including, without limitation, any assessment under Article 9 hereof, the Association may retain and apply such proceeds to the delinquency. Any surplus remaining after application of the proceeds to any delinquency shall be paid by the Association to the affected Owner.

Article 9  
Easements

9.1 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 Fulton County, Georgia.

9.2 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 borrow money for the purpose of improving the Common Property, or any portion thereof, or for constructing, repairing or improving any facilities located or to be located thereon and, 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.);

(b) 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;

(c) the right of the Association to transfer or convey title to 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;

(d) 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; and

(e) all encumbrances, zoning conditions and other matters shown by the public records affecting title to the Common Property.

9.3 Easement for Encroachment and Overhang – Townhome Units, Retail Unit and Condominium. There is hereby reserved to the Declarant for the benefit of any Approved Builder and each Townhome Unit, the Retail Unit and the Condominium a reciprocal appurtenant easement for encroachment and overhang between: (i) adjacent Townhome Units; (ii) a Townhome Unit and adjacent Common Property or the Retail Unit; (iii) the Retail Unit and Common Property; or (iv) the Condominium and adjacent 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 Townhome Units, Retail Unit or Condominium as the case may be.

9.4 Easements for Utilities – Declarant, Association and Approved Builder. 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, installing, altering, 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, repair, replacement and maintenance 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.

9.5 Easement for Utilities – Townhome Units, Retail Unit and Condominium. Declarant hereby establishes for the benefit of each Townhome Unit, the Retail Unit and the Condominium 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, Retail Unit or the Condominium and situated in, on or under any other Townhome Unit, Retail Unit, Condominium or the Common Property. In the event that any Owner desires access to another Townhome Unit, Retail Unit or the Condominium 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) or

the Retail Unit or the Condominium Association, respectively, 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, the Owner of a Retail Unit, the Condominium Association or a Condominium Unit Owner, as the case may be, 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, the Retail Unit or the Condominium, reasonable steps shall be taken to protect such Townhome Units, Retail Unit and Condominium and the property of the Owners and Occupants thereof, and damage shall be repaired by the Person causing the damage at its sole expense.

9.6 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.

9.7 Easement for Association 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.

9.8 Easement for Townhome Unit and Retail Unit Maintenance. Declarant hereby reserves for the benefit of each Townhome Unit and the Retail Unit reciprocal appurtenant easements between adjacent Townhome Units and the Retail Unit and an easement over adjacent Common Property for the purpose of maintaining or repairing the improvements located on each Townhome Unit and the Retail 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 or the Retail Unit. 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, Retail Unit or Common Property over which this easement is exercised which arises out of such maintenance or repair work.

9.9 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, repair, replacement, and maintenance of 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.

9.10 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 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, changing any Unit or portion of a Unit to Common Property, changing any Common Property to a Unit, 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.

9.11 Easement for Private Streets, Parking Lot, 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 and parking lot 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 Fulton 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, parking lot, sidewalks, traffic directional signs, grading for proper drainage of said streets and roads, and related activities and improvements.

## Article 10 General Provisions

10.1 Enforcement. Each Owner and Occupant shall comply strictly with the Bylaws, rules and regulations, Architectural Guidelines 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 plat(s) for the Community and in the deed to such Owner's Unit, if any. The Declarant and 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; provided, however, only one fine may be imposed for a single violation such that an Owner or Occupant may not be fined by the Declarant and the Board of Directors for the same violation; and provided, further, Declarant or the Board, as the case may be, may count each day a violation continues after notice thereof as a separate violation. In the event fines or other sanctions are imposed by Declarant hereunder, Declarant shall have any and all rights to

collect such fines or sanctions (which fines shall be payable to the Association) and any related charges, including, without limitation, attorney's fees actually incurred and costs of collection, in the same manner as provided herein for the collection of assessments by the Association acting through the Board. Failure to comply with this Declaration, the Bylaws, Architectural Guidelines 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 or the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The 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 Architectural 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.

10.2 Occupants Bound. All provisions of the Declaration, Bylaws, rules and regulations, use restrictions and Architectural 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 Architectural 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. Unpaid fines shall constitute a lien on a Unit.

10.3 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, the use restrictions or Architectural Guidelines. 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.

10.4 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.

10.5 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.

10.6 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.

10.7 Amendment.

(a) By Declarant. This Declaration may be amended unilaterally at any time and from time to time by Declarant if such amendment is: (a) 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) necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Units subject to this Declaration; (c) 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) 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: (i) materially adversely affect the substantive rights of any Owners hereunder to use and enjoy the Owner's Unit without the consent of the affected Owner; (ii) adversely affect title to any Unit without the consent of the affected Owner; or (iii) adversely affect the rights of the holder of any security interest granted by Declarant encumbering any portion of the Community unless the holder thereof consents thereto in writing.

(b) By the Board of Directors. 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.*



(c) By the Members. In addition to the above, this Declaration may be amended upon the affirmative vote or written consent or any combination thereof of the Owners of at least two-thirds (2/3) of the Units and the consent of Declarant; provided, however, any amendment which affects the rights of the Retail Unit Owner shall require the written consent of the Retail Unit Owner in order to be effective. 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.

10.8 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.

10.9 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.

10.10 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.

10.11 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.

10.12 Preparer. This Declaration was prepared by Rachel E. Conrad and David N. Dorough, Jr., Dorough & Dorough, LLC, Attorneys at Law, 160 Clairemont Avenue, Suite 650, Decatur, Georgia 30030.

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

10.14 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.

10.15 Security. ALL OWNERS, OCCUPANTS, GUESTS, LICENSEES, AND INVITEES, AS APPLICABLE, ACKNOWLEDGE THAT THE DECLARANT, APPROVED BUILDER, THE ASSOCIATION, AND THE BOARD OF DIRECTORS, 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, 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, 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.

10.16 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.

10.17 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.

10.18 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.

10.19 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.

10.20 Cumulative Effect; Conflict. The covenants, restrictions, and provisions of this Declaration shall be cumulative with those of the Condominium 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 the Condominium Declaration and Condominium 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.

10.21 Disclosures Regarding Development. Every Owner, by acceptance of a deed to a Unit, acknowledges that it will be subject to and bound by the terms and conditions of this Declaration, Bylaws, Architectural Guidelines and any rules and regulations adopted pursuant thereto. Each Owner and Occupant also acknowledges the following:

(a) that the Development is located adjacent to thoroughfares and may be affected by traffic and noise from time to time, and such thoroughfares may be improved or widened in the future;

(b) that the views from an Owner's Unit may change over time due to among other things, additional development and the removal or addition of landscaping;

(c) that no representations are made regarding the zoning of adjacent property or that the category to which adjacent property is zoned may not change in the future;

(d) that no representations are made regarding the schools that currently, or which may in the future, serve the Development;

(e) that because in every development there are conditions that different purchasers may find objectionable, including but not limited to traffic congestion and related noise, each Owner acknowledges that there may be conditions outside of the property that such Owner finds objectionable and that it shall be the sole responsibility of such Owner to become acquainted with neighborhood conditions that could affect the Unit;

(f) that Declarant will be constructing portions of the Development and adjacent property and may engage in other construction activities related to other portions of the development and such adjacent property. Such construction activities may, from time to time, produce certain conditions within or in the vicinity of the Development, including, without limitation: (i) noise or sound that is objectionable because of its volume, duration, frequency or shrillness; (ii) smoke; (iii) noxious, toxic, or corrosive fumes or gases; (iv) obnoxious odors; (v) dust, dirt or flying ash; (vi) unusual fire or explosion hazards; (vii) temporary interruption of utilities; and/or (viii) other conditions that may threaten the security or safety of Persons in the Development.

Notwithstanding the foregoing, each Owner agrees that such conditions in the Development resulting from construction activities shall not be deemed a nuisance or discomfort to Owner and shall not cause Declarant and its representatives or agents to be deemed in violation of any provision of this Declaration; and

(g) that a portion of the plaza area, as shown on the recorded subdivision plat(s) for the Development, may be converted into a rotary area or turn around in connection with providing access to the Development from Norcross Street and Forrest Street, respectively. Each Owner and Occupant acknowledges that the foregoing may result in construction activity in the

Development and disruption to traffic patterns and that such activity shall not be deemed a nuisance or a violation of any other provision of this Declaration.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Declarant herein hereby executes this instrument under seal, this 14th day of September, 2017.

DECLARANT: **JWNSP ROSWELL, LLC**, a Georgia limited liability company

By: \_\_\_\_\_ (SEAL)  
Name: Seeral Sparks  
Title: Manager

Signed, sealed, and delivered in the presence of:

[Signature]  
WITNESS

[Signature]  
NOTARY PUBLIC

My Commission Expires: 9/10/2020

[NOTARY SEAL]



CONSENT OF LIEN HOLDER

HAMILTON STATE BANK ("Lender"), as holder of that certain Deed to Secure Debt, Assignment of Rents and Security Agreement, dated October 11, 2016 and recorded October 19, 2016 in Deed Book 56749, Page 683, *et seq.*, Fulton County, Georgia land records (hereinafter referred to as the "Security Deed"), encumbering all or a portion of the property described in Exhibit "A" hereof, hereby consents to the Master Declaration of Protective Covenants, Conditions, Restrictions and Easements for Roswell Court and agrees that any foreclosure of the security title and interest under Security Deed or any other instrument that Lender holds shall be subject to the Declaration.

This 14<sup>th</sup> day of September, 2017.

LENDER: **HAMILTON STATE BANK**

By: *J. Cleve Masee*  
Name: J. Cleve Masee  
Title: Senior Vice President

Signed, sealed, and delivered  
in the presence of:

[BANK SEAL]

*Shaina Gifford*  
WITNESS

*Jody Strike*  
NOTARY PUBLIC

My Commission Expires: 1/21/19

[NOTARY SEAL]



EXHIBIT "A"  
Property Description

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lots 425 and 426 of the 1st District, 2nd Section, City of Roswell, Fulton County, Georgia, as shown on that certain **Final Subdivision Plat for Roswell Court (f.k.a. Norcross Street)** for JWNSP Roswell, LLC, dated November 2, 2016, prepared by GeoSurvey, Ltd., containing the seal of Craig Jennings, Georgia Registered Land Surveyor No. 3043, filed July 26, 2017 and recorded in Plat Book 402, pages 90 and 91, Fulton County, Georgia records, reference to said plat and the record thereof being hereby made for a more complete description.



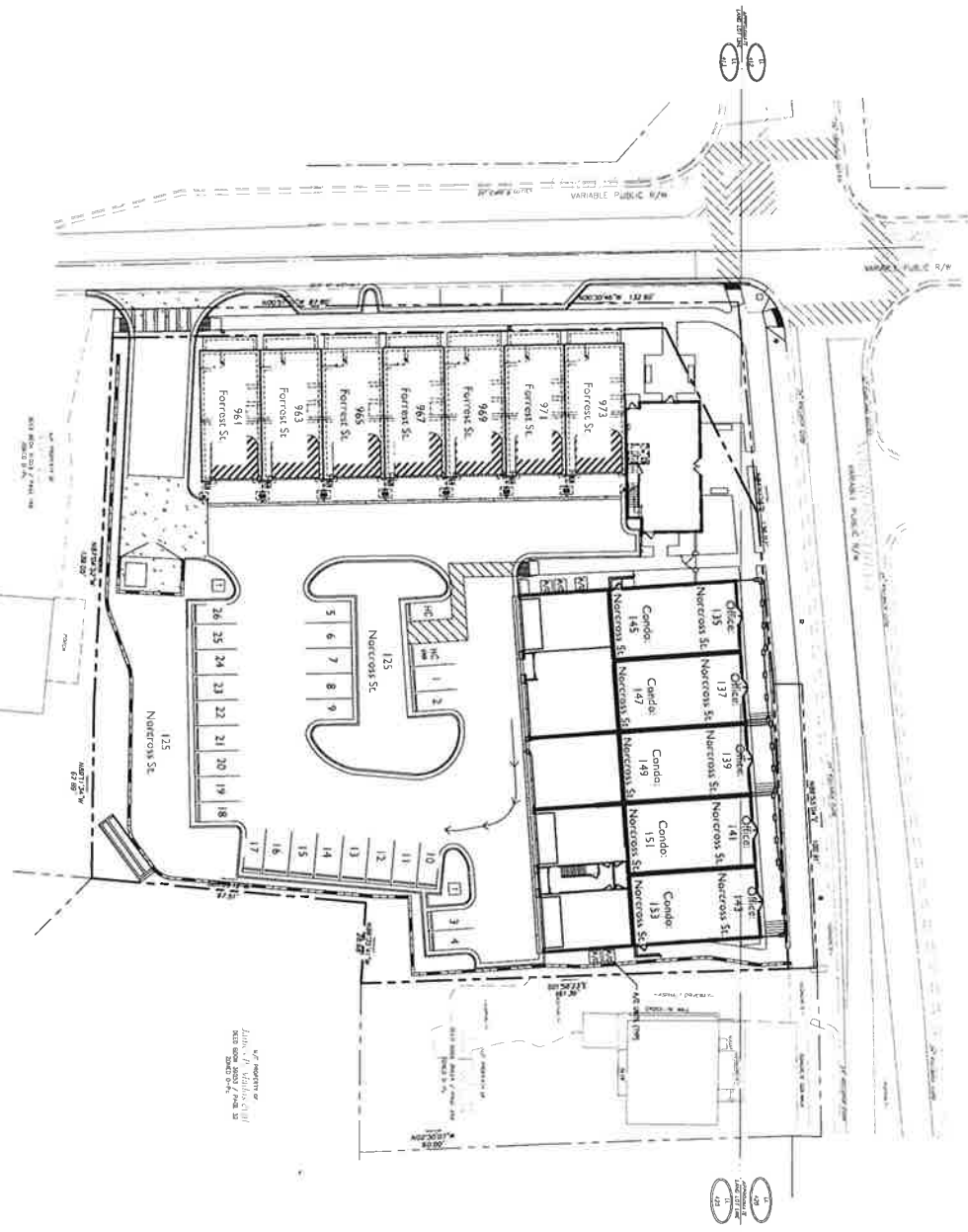
EXHIBIT "B"

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 412, 413, 425 and 426 of the 1st District, 2nd Section, City of Roswell, Fulton County, Georgia.

**EXHIBIT "C"**  
**Allocation of Parking Spaces**

<b>Address</b>	<b>No. of Parking Space(s)</b>	<b>Parking Space(s) Assigned</b>
975/977 Forrest	2	#3, #4
135 Norcross	1	#10
137 Norcross	1	#11
139 Norcross	1	#12
141 Norcross	1	#13
143 Norcross	1	#14
Visitors	5	#5 - #9, inclusive
Handicap	2	(N/A)
Open	14	(N/A)
Street	4	(N/A)
<b>TOTAL</b>	<b>32</b>	



**Parking Allocation**

Address	Assigned	No. of Parking Spaces	Parking Spaces
973 Forrest St	2	43-44	
971 Forrest St	1	410	
135 Norcross	1	411	
137 Norcross	1	412	
139 Norcross	1	413	
141 Norcross	1	414	
143 Norcross	1	75 - 79 (inclusive)	
Handicap	2	(N/A)	
Open	14	(N/A)	
Other	1	(N/A)	
<b>TOTAL</b>	<b>32</b>		



NO.	REVISIONS	DATE
1	CITY AND COUNTY COMMENTS	3-30-16
2	CITY COMMENTS	4-12-16
3	GRADE ADJUSTMENTS	6-10-16
4	LEVEL SPREADER	8-28-16
5	ARCHITECTURE UPDATE	7-18-16
6	ARCHITECTURE UPDATE	8-29-16

PROJECT NO. 16-0000  
 PREPARED BY: AEC  
 CHECKED BY: AEC  
 DATE: 10/25/16

**ROSWELL COURT**  
 TOWNHOMES, CONDOS AND RETAIL  
 ROSWELL, GEORGIA

**PARKING ALLOCATION PLAN**



EXHIBIT

EXHIBIT "D"

BYLAWS

OF

ROSWELL COURT COMMUNITY ASSOCIATION, INC.

Prepared By:  
Rachel E. Conrad  
DOROUGH & DOROUGH, LLC  
Attorneys at Law  
160 Clairemont Avenue  
Suite 650  
Decatur, Georgia 30030  
(404) 687-9977

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BYLAWS  
OF  
ROSWELL COURT COMMUNITY ASSOCIATION, INC.

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BYLAWS  
OF  
ROSWELL COURT COMMUNITY ASSOCIATION, INC.

Article 1

Name, Membership, Applicability and Definitions

1.1. Name. The name of the corporation shall be Roswell Court 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 Roswell Court (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.

Action By Written Consent. Any action required or permitted to be approved by the

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 three (3) directors as follows: one director shall be elected by the Owners of the Residential Units; one director shall be elected by the Owner of the Retail Unit and the Commercial Condominium Unit Owners (collectively, the "Commercial Unit Owners"); and the remaining director shall be elected at-large by all of the Owners in the Development. All directors shall serve for a term of two (2) years or until a successor is elected. Notwithstanding the foregoing, in the event that the Residential Unit

Owners or the Commercial Unit Owners, respectively, are unable to elect a director, such director(s) shall be elected at large by all of the Owners in the Development.

3.4. Removal of Directors. At any annual, regular or special meeting of the Association, any member of the Board of Directors may be removed, with or without cause as follows: (a) any director elected by a majority of the Residential Owners may be removed upon a majority vote of the Residential Unit Owners and a successor may then and there be elected by such Residential Unit Owners to fill the vacancy thus created; (b) any director elected by the Commercial Unit Owners may be removed upon a majority vote of the Commercial Unit Owners and a successor may then and there be elected by such Commercial Unit Owners to fill the vacancy thus created; and (c) any director elected by all Owners in the Development may be removed by a majority vote of the membership and a successor may then and there be elected by such Owners 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.

3.5. 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; provided, however, if a Residential Unit Owner or Commercial Unit Owner, respectively, resigns the remaining Board members shall appoint another Residential Unit Owner or Commercial Unit Owner, as the case may be, to fill such vacancy. Each Person so selected shall serve the unexpired portion of the term and continue in office until a successor is elected.

3.6. 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.

3.7. 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.

3.8. 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.

3.9. 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.

3.10. 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.

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

3.12. 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.

3.13. 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.

3.14. 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.

3.15. 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.

3.16. 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.

3.17. 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.

3.18. 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.

3.19. 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 10, Section 10.1 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. During the time that the Declarant has the right to appoint the officers and directors of the Association as provided in these Bylaws, all offices may be held by the same Person. Thereafter, any two or more offices may be held by the same Person, excepting the offices of President and Secretary. The officers shall also be directors.

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 the Uniform Electronic Transaction Act, O.C.G.A. § 10-12-1, *et seq.*, the Nonprofit Code, 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 electronic means providing sufficient security, reliability, identification and verifiability, which electronic means have been approved by the Board of Directors in its sole discretion.

6.5. Amendment.

(a) Board of Directors. 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.*

(b) By Declarant. The Declarant may unilaterally amend these Bylaws for any purpose; provided, however, any such amendment shall not: (a) materially adversely affect the substantive rights or obligations of any Owner; or (b) adversely affect the rights of the holder of any security interest without the written consent of such holder.

(c) By the Members. 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.